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Supreme Court of the United States

OCTOBER TERM, 1948

No. 327

EMPRESA SIDERURGICA, S. A., A CORPORATION OF COLOMBIA, SOUTH AMERICA, ET AL., APPELLANTS,

vs.

COUNTY OF MERCED, A MUNICIPAL CORPORATION, J. EMMETT McNAMARA, ASSESSOR OF THE COUNTY OF MERCED, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED SEPTEMBER 29, 1948.

SUPREME COURT OF THE UNITED STATES

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[fol. 1] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MERCED

No. 15928

EMPRESA SIDERURGICA, S. A., a corporation or Colombia, South America, and Vanderburg & Co., Inc., a California corporation, Plaintiffs,

vs.

COUNTY OF MERCED, a municipal corporation, J. EMMETT MCNAMARA, Assessor of the County of Merced, First John Doe, Second John Doe, Third John Doe, Fourth John Doe, Fifth to Twentieth Does, Defendants

COMPLAINT—Filed February 11, 1946

Now comes Plaintiffs, Empresa Siderurgica, S. A., and Vanderburgh & Co., Inc., and complain of Defendants above named, and for cause of action allege:

I

That Plaintiff, Empresa Siderurgica, S. A., is a corporation duly organized and existing under and by virtue of the laws of Colombia, S. A. and having its principal place of business in Medellin, Colombia, South America. That Plaintiff, Vanderburgh & Co., Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of California and having its principal place of [fol. 2] business in the City and County of San Francisco, State of California.

II

That Defendant, County of Merced, is a municipal corporation duly organized and existing under and by virtue of the laws of the State of California. That Defendant, J. Emmett McNamara, is and at all times mentioned herein has been the duly elected, qualified and acting Tax Assessor of the County of Merced, State of California.

III

That the Defendants, First John Doe, Second John Doe, Third John Doe, Fourth John Doe, and Fifth to Twentieth

Does are the fictitious names of Defendants whose true names are to these Plaintiffs unknown and Plaintiffs ask that when such true names are discovered that this Complaint be amended by inserting such true names in the place instead of such fictitious names.

IV

That the Plaintiff, Empresa Siderurgica, S. A., is a corporation engaged in the business of manufacturing certain commodities in Colombia, South America; that all of Plaintiff's business is conducted in South America and that it is not qualified to do business in California and does no business in this state, nor does it have any office or other place of business located in the State of California.

[fol. 3]

V

That the Plaintiff, Vanderburgh & Co., Inc., is a corporation duly incorporated under the laws of the State of California and engaged in the business of exporting, importing and acting as forwarding agents.

VI

That on or about November 11, 1944, Plaintiff, Empresa Siderurgica, S. A., entered into a contract with Kaiser Engineers for the purchase of buildings, material and equipment of the Yosemite Portland Cement Plant, located near the City of Merced, in the County of Merced, State of California. That under the terms of said contract, title to said cement plant and equipment was not to pass to Empresa Siderurgica, S. A. until two conditions had been fulfilled, to-wit: (1) the issuance of an export permit for the plant and equipment to Colombia, S. A. by the Foreign Economic Administration; and (2) the establishment of a letter of credit to cover the entire purchase price with the main office of the Bank of America, National Trust & Savings Association, in San Francisco. The export license, as aforesaid, was issued by the Foreign Economic Administration on the 15th day of December, 1944. The letter of credit was established with the Bank of America on January 3, 1945. Simultaneous with the fulfillment of both conditions, as aforesaid, to-wit, on January 3, 1945, title to the buildings, materials and equipment of the Yosemite Portland Cement

[fol. 4] Plant passed to Plaintiff, Empresa Siderurgica, S. A., and the possession of the said plant and equipment was taken by the forwarding agent, Vanderburgh & Co., Inc., Plaintiff herein.

VII

That prior to January 3, 1945, and in contemplation of the said contract; Plaintiff, Vanderburgh & Co., Inc., forwarding agents for Empresa Siderurgica, S. A., contracted with Bigge Drayage Company, a common carrier of the City of Oakland, County of Alameda, State of California, to dismantle, package and prepare for shipment and remove the said plant and equipment from its location at Merced, California to the railroad siding and load on cars, as cars and shipping space became available, for shipment to Colombia, South America. That immediately upon passage of title to the plant and equipment to Empresa Siderurgica, S. A., and the taking of possession thereof by Vanderburgh & Co., Inc. as forwarding agents, Bigge Drayage Company, pursuant to its contract with Vanderburgh & Co., Inc., undertook and entered upon the work of dismantling said cement plant and equipment and actual shipments of said plant and equipment out of said County of Merced in transit to Colombia, South America, began in February, 1945. That the work of dismantling and shipping said plant and equipment has continued uninterruptedly since January, 1945, and has progressed as rapidly as transportation facilities [fol. 5] and war conditions permitted. That the sale of said plant and equipment and its purchase by Empresa Siderurgica, S. A. was for the purpose of and was conditioned upon the immediate export and shipment of said plant and equipment to Colombia, South America, as evidenced by the terms of the contract of sale and the conduct of the parties pursuant thereto. None of said plant and equipment was held or detained in the County of Merced for any purpose of the Plaintiffs' or for any purpose other than to await necessary dismantling operations and shipping and transportation facilities. That on January 18, 1946, the entire plant had left the County of Merced, and on January 29, 1946, the whole of the plant had been completely shipped out of the United States.

VIII

That on or about March 5, 1945, the Defendant J. Emmett McNamara, acting as County Assessor for the Defendant, County of Merced, did levy on and address an assessment on "Personal Property located on S½ of Sec. 12-7-13;" that this said assessment was directed and addressed to "Unknown Owner" of the aforesaid Yosemite Portland Cement Plant; that said levy and assessment for personal property taxes was in the amount of Nine Thousand and Ninety Dollars ($9,090.00).

IX

That thereafter, Plaintiffs notified Defendant Assessor of the facts as hereinabove set forth, and further notified said Defendant that the whole of said personal property [fol. 6] purportedly assessed was an export, and further was property in the course of foreign commerce; but notwithstanding such facts said Defendant did demand payment of such personal property tax. That thereafter, Defendant J. Emmett McNamara did appear before the Board of Supervisors of the County of Merced and did move to correct the record of the tax roll on such personal property assessment to Seven Thousand Nine Hundred and Ninety Nine Dollars and Twenty Cents ($7,999.20); that such correction was ordered and allowed by the said Board of Supervisors and the amount of personal property tax was corrected on the tax roll of the said County to the sum of $7,999.20, and said Defendant did demand payment of such corrected personal property tax.

X

Pursuant to said demand, Plaintiffs paid said tax involuntarily and under protest, under the provisions of Section 5136 of the Revenue and Taxation Code of the State of California, on or about the 31st day of August, 1945; and concurrently with such payment, Plaintiffs enclosed and delivered to Defendant, J. Emmett McNamara, as Assessor of the Defendant County of Merced, a protest, a true and correct copy of which is attached hereto and marked Exhibit "A".

XI

That the said tax was and is an unlawful tax on the personal property of Plaintiffs and was illegally levied and

[fol. 7] placed upon the tax roll of the said County of Merced under color of law therefor. That the imposition of the said personal property tax is an unlawful tax on the following grounds:

(1) That the property assessed by this said personal property tax and for which payment under protest was made as aforesaid, was at the time of the assessment of this tax and ever since has been an export and as such was and is exempt from taxation by the State of California and/or the County of Merced under the provisions of Article I, Section 10, Clause 2 of the Constitution of the United States, which prohibits taxation of exports by the states, and the said property was not properly subject to taxation by the State of California and/or the County of Merced under Article XIII, Section 1 of the Constitution of the State of California and Section 202 of the Revenue and Taxation Code of the State of California.

(2) That the property assessed by this personal property tax and for which payment under protest was made, as aforesaid, was at the time of assessment of [fol. 8] this tax in the hands of a common carrier and was and is property or commodities entered and moving in the course of transportation in foreign commerce, and as such, was and is exempt from taxation by the State of California and/or the County of Merced under the provisions of Article I, Section 8, Clause 3 of the Constitution of the United States and under Article XIII, Section 1 of the Constitution of the State of California, and Section 202 of the Revenue and Taxation Code of the State of California; and that such taxation constituted and does constitute an interference with goods entered and moving in the course of foreign commerce.

(3) That this assessment constitutes a deprivation and taking away of the property without due process of law contrary to the provisions of Article XIV, Section 1, of the Constitution of the United States, since said assessment was levied on property not within or subject to the jurisdiction of the State of California and/or the County of Merced for taxing purposes under Section 1 of the Article XIII of the Constitution of the

State of California and Section 202 of the Revenue and [fol. 9] Taxation Code of the State of California.

(4) That the property assessed was owned by a corporation not a resident of the State of California nor authorized to do business in the State of California, nor having any place of business in the State of California, and since certain of the property assessed was at the time of the said assessment outside of the County of Merced and/or the State of California, such assessment was levied on property, the situs of which was not within the State of California.

XII

That the Defendants have failed and refused, and now fail and refuse to pay to Plaintiffs the amount of said tax illegally collected or any part thereof.

XIII

This action was brought pursuant to the provisions of Section 5136 to 5143, inclusive, of the Revenue and Taxation Code of the State of California.

Wherefore, Plaintiffs pray Judgment against Defendants in the sum of Seven Thousand Nine Hundred and Ninety Nine Dollars and Twenty Cents ($7,999.20), together with interest at the legal rate per annum from the date of payment, and for Plaintiffs' costs of suit herein incurred, and for such other and further relief as to the Court may seem [fol. 10] just and proper in the premises.

Ward, Kellogg & Simmons, by (S.) Scott D. Kellogg,
Attorneys for Plaintiff.

[fol. 11] *Duly sworn to by Scott D. Kellogg. Jurat omitted in printing.*

[fol. 12] EXHIBIT "A" TO COMPLAINT

Protest of Personal Property Taxes Assessed Against Machinery and Equipment Formerly Comprising the Cement Manufacturing Plant of Yosemite Portland Cement Co.

To the County of Merced, State of California, and J. Emmett McNamara, County Assessor:

I

Vanderburgh & Co., Inc., a California corporation, forwarding agent, engaged in the business of export and import trade, on behalf of itself and on behalf of Empresa Siderurgica, S. A., a corporation duly organized and doing business under and by virtue of the laws of Colombia, South America, herewith pays under protest as provided for and in accordance with the Revenue and Taxation Code Div. 1, Pt. 9, Ch. 5, Art. 2, Sections 5136 et seq., that certain personal property tax levied by J. Emmett McNamara, County Assessor in and for Merced County, State of California, upon the machinery, equipment, and other miscellaneous property formerly comprising the cement manufacturing plant of Yosemite Portland Cement Co., which formerly had a situs as being located on the S½ of S¼ of Section 12-7-3 in the County of Merced, State of California; such tax levy being evidenced by a tax bill and notice dated March 5, 1945, in the amount of $9,090.00 which was subsequently duly reduced to $7,999.20. A check is attached hereto in the sum of $7,999.20 in payment of said tax under protest.

[fol. 13] II

Said Vanderburgh & Co., Inc., acting on behalf of itself and said Empresa Siderurgica, S. A., represents and claims:

(a) That the whole of said assessment is void.

(b) That the grounds on which the claim is founded are as follows:

(1) That on January 3, 1945, Empresa Siderurgica, S. A., took title to the property assessed under the aforesaid tax assessment under a contract whereby Empresa Siderurgica agreed to purchase said property and take title thereto only on the happening of certain conditions, one of which said conditions was the issuance of an export permit by the Foreign Economic Administration of the United States, so that said property might be exported immediatey after the taking of title by Empresa Siderurgica to Colombia, South America, that on January 3, 1945, and only after said

export permit was actually issued by the Foreign Economic Administration, for all said personal property, possession of said property was taken by Vanderburgh & Co. Inc., forwarding agent for Empresa Siderurgica, S. A. That said forwarding agent employed Bigge Drayage Company, a common carrier, upon the date title passed to Empresa Siderurgica, [fol. 14] S. A., and possession taken by said forwarding agent, to immediately proceed to undertake and begin the work of dismantling said plant of equipment for shipment and the crating and shipment of the said plant and equipment; that by the contract of purchase of the said property by Empresa Siderurgica, S. A., and by the subsequent conduct of its forwarding agent, Vanderburgh & Co., Inc., and the common carrier, Bigge Drayage Company, all of the personal property herein taxed, immediately assumed the status of an export; and that the property assessed by this personal property tax, and for which payment under protest is made herewith, was at the time of the assessment of this tax, and ever since has been, an export and as such was exempt from taxation by the State of California and/or the County of Merced, under the provisions of the Constitution of the United States, Article I, Section 10, Clause 2, which prohibits taxation of exports by the several states of the United States, and the said property was not properly subject to taxation by the State of California and/or the County of Merced, under Article XIII, Section 1, Constitution of the State of California and Section 202 of the Revenue and Taxa- [fol. 15] tion Code of the State of California.

(2) That on January 3, 1945, when title to the assessed property was taken by Empresa Siderurgica, S. A., the possession of said personal property passed immediately into the hands of Vanderburgh & Co., Inc., the forwarding agent for Empresa Siderurgica, S. A., and the property itself was taken over by Bigge Drayage Company, a common carrier, who forth with and immediately entered upon the process of dismantling of said personal property, of crating said property for shipment and shipped said property to Colombia, S. A.; that as of March 5, 1945, the date of the assessment herein, as hereinabove set forth, various carloads of

said property had already been shipped by Vanderburgh & Co., Inc. out of the County of Merced and out of the State of California, enroute to Colombia, S. A., and the work of dismantling and shipping of the said plant was going on and has gone on uninterrupted ever since said date and shipments of the said property have continued and are continuing to Colombia, S. A.; that the property assessed in this personal property tax, and for which payment under protest is made herewith, was at the time of the assessment of this tax, and ever [fol. 16] since has been, property or commodity entered and moving in the course of transportation in foreign commerce, and as such was and is exempt from taxation by the State of California and/or the County of Merced. Under the provisions of the Constitution of the United States, Article I, Section 8, Clause 3 and under Article XIII, Section 1, of the Constitution of the State of California and Section 202 of the Revenue and Taxation Code of the State of California, such taxation by the County of Merced constituted and does constitute an interference with goods entered and moving in the course of foreign commerce.

(3) That because of threats of officials of the County of Merced to interfere with and interrupt the shipping of said personal property from the County of Merced to Colombia, S. A., it has become necessary to pay said taxes under this protest; that the State of California has no jurisdiction over said property for taxing purposes and that this assessment constitutes a deprivation and taking away of the property of Vanderburgh & Co., Inc., and/or Empresa Siderurgica, S. A., without due process of law, contrary to the provisions of the Constitution of the United States, Article XIV, Section [fol. 17] 1, because the assessment is levied on property not within or subject to the jurisdiction of the State of California and/or the County of Merced, for taxing purposes, under Article XIII, Section 1, of the Constitution of the State of California and Section 202 of the Revenue and Taxation Code of the State of California.

(4) That the property assessed is owned by a corporation not a resident of the State of California, nor authorized to do business in the State of California, nor

having any place of business in the State of California; and the assessment was levied on property, the situs of which was not within the State of California; that there is no authority under the California Constitution or California Statutes for the levying of a tax on personal property having a situs outside of the State and owned by persons or corporations not a resident of the State or not present within the State for any purpose.

(5) That the assessment referred to above and for which payment under protest is made herewith is illegal, invalid and void under the Constitution and laws of the State of California and the Constitution of the United States, as hereinabove set out; and that if the [fol. 18] laws of the State of California purport to authorize the said assessment, said laws are invalid for the reason that they are in contravention and in conflict with the Constitution of the United States.

As and for a second and further protest of said assessment and payment under protest, said Vanderburgh & Co., Inc., on behalf of itself and said Empresa Siderurgica, S. A., alleges:

I

That it hereby incorporates herein paragraph I hereinabove set forth, the same and to all intents and purposes as if said paragraph was herein set forth in full verbatim.

II

Said Vanderburgh & Co., Inc., acting on behalf of itself and said Empresa Siderurgica, S. A., represents and claims:

(a) That that portion or part of said assessment allocated to the machinery, equipment and/or other miscellaneous property hereinabove described which was crated and loaded on freight cars, such property being within the County of Merced, State of California, is void.

(b) That the grounds on which the claim is founded are set forth in full in paragraph II (b) et seq. hereinabove and are incorporated herein by reference the same and to all intents and purposes as if said para-

[fol. 19] graph et seq. were herein set forth in full verbatim.

As and for a third and further protest of said assessment and payment under protest, said Vanderburgh & Co., Inc., on behalf of itself and said Empresa Siderurgica, S. A., alleges:

I

That it hereby incorporates herein paragraph I hereinabove set forth, the same and to all intents and purposes as if said paragraph was herein set forth in full verbatim.

II

Said Vanderburgh & Co., Inc., acting on behalf of itself and said Empresa Siderurgica, S. A., represents and claims:

(a) That that portion or part of said assessment is void which is allocated to the machinery, equipment and/or other miscellaneous property hereinabove described which was crated and ready to be loaded on freight cars for shipment to Colombia, South America, although not so loaded on March 5, 1945.

(b) That the grounds on which the claim is founded are set forth in full in paragraph II (b) et seq. hereinabove and are incorporated herein by reference the same and to all intents and purposes as if said paragraph et seq. were herein set forth in full verbatim.

As and for a fourth and further protest of said assess-
[fol. 20] ment and payment under protest, said Vanderburgh & Co., Inc., on behalf of itself and said Empresa Siderurgica, S. A., alleges:

I

That it hereby incorporates herein paragraph I hereinabove set forth, the same and to all intents and purposes as if said paragraph was herein set forth in full verbatim.

II

Said Vanderburgh & Co., Inc., acting on behalf of itself and said Empresa Siderurgica, S. A., represents and claims:

(a) That that portion or part of said assessment is void which is allocated to the machinery, equipment and/or other miscellaneous property hereinabove described which had been dismantled preparatory for crating, loading and shipping, although not so crated, loaded or shipped on March 5, 1945.

(b) That the grounds on which the claim is founded are set forth in full in paragraph II (b) et seq. hereinabove and are incorporated herein by reference the same and to all intents and purposes as if said paragraph et seq. were herein set forth in full verbatim.

As and for a fifth and further protest of said assessment and payment under protest, said Vanderburgh & Co., Inc., on behalf of itself and said Empresa Siderurgica, S. A., [fol. 21] alleges:

I

That it hereby incorporates herein paragraph I hereinabove set forth, the same and to all intents and purposes as if said paragraph was herein set forth in full verbatim.

II

Said Vanderburgh & Co., Inc., acting on behalf of itself and said Empresa Siderurgica, S. A., represents and claims:

(a) That that portion or part of said assessment is void which is allocated to the machinery, equipment and/or other miscellaneous property hereinabove described which had not been on March 5, 1945, dismantled, crated, loaded or shipped, but was covered by the contract between Empresa Siderurgica, S. A., and Henry J. Kaiser Co. as well as the contract between Vanderburgh & Co., Inc., and Bigge Drayage Co., both of which, by their terms, required that such property be dismantled, crated, loaded and shipped to Colombia, South America.

(b) That the grounds on which the claim is founded are set forth in full in paragraph II(b) et seq. hereinabove and are incorporated herein by reference the same and to all intents and purposes as if said paragraph et seq. were herein set forth in full verbatim.

[fol. 22] Dated this 31st day of August, 1945, in the City of Merced, County of Merced, State of California.

Respectfully submitted, Vanderburgh & Co., Inc., by (S.) Scott D. Kellogg, Authorized Agent. Empresa Siderurgica, S. A., by Vanderburgh & Co., Inc., by (S.) Scott D. Kellogg, Authorized Agent.

Ward, Kellogg & Simmons, by (S.) Scott D. Kellogg, Attorneys for Vanderburgh & Co., Inc. and Empresa Siderurgica, S. A., 861-864 Mills Tower, San Francisco 4, California.

[fol. 23] [File endorsement omitted]

IN SUPERIOR COURT OF MERCED COUNTY

[Title omitted]

JOINT ANSWER—Filed July 5, 1946

Come now the defendants, County of Merced and J. Emmett McNamara, and for their joint answer to the complaint herein:

I

Admit the allegations contained in paragraphs numbered I, II, III, IV, V, VIII, X and XIII thereof.

II

Admit that part of paragraph numbered VI thereof which alleges the existence of a contract dated November 11, 1944 between plaintiff, Empresa Siderurgica, S. A. and Henry J. Kaiser Company, a copy of which is attached as [fol. 24] exhibit "1" to a stipulation filed herein; the existence of export license dated December 15, 1944, issued by the Foreign Economic Administration, a copy of which is attached to said stipulation as exhibit "5"; and the existence of a letter of credit dated January 3, 1945, a copy of which is attached to said stipulation as exhibit "6."

Deny each and every allegation, matter and thing contained in paragraph numbered VI thereof, except as the same is in this paragraph expressly admitted, qualified or explained.

III

Admit that part of paragraph numbered VII thereof which alleges the existence of a contract between Vanderburgh & Co., Inc., and Bigge Drayage Co., dated December 2, 1944, a copy of which is attached to said stipulation as exhibit "2"; that on January 18, 1946, the entire plant had left the County of Merced; and that on January 29, 1946, the whole of said plant had been completely shipped out of the United States.

Allege that subsequent to the 3rd day of January, 1945, Bigge Drayage Co., commenced the work of dismantling said cement plant and equipment and shipments thereof by rail commenced in March, 1945, from the plant site in Merced County, California, to the port of vessel shipment; and that Bigge Drayage Company was and is a common carrier by motor vehicle.

[fol. 25] Deny each and every allegation, matter and thing contained in paragraph numbered VII thereof, except as the same is in this paragraph expressly admitted, qualified, or explained.

IV

Admit that part of paragraph numbered IX thereof which alleges that plaintiffs claimed to defendant J. Emmett McNamara that said personal property was an export and in the course of foreign commerce; that said defendant did demand payment of such personal property tax; that said defendant moved to correct the record of the tax roll on such personal property assessment to $7999.20, which correction was ordered and allowed by the Board of Supervisors of Merced County and said defendant demanded payment of such personal property tax as corrected.

Deny each and every allegation, matter and thing contained in paragraph numbered IX thereof, except as the same is in this paragraph expressly admitted, qualified or explained.

V

Admit that part of paragraph XI thereof which alleges that the property assessed was owned by a corporation not a resident of the State of California nor authorized to do business in the State of California, nor having any place of business in the State of California.

Deny each and every allegation, matter and thing con-

[fol. 26] tained in paragraph numbered XI thereof, except as the same is in this paragraph expressly admitted, qualified or explained.

VI

Admit that part of paragraph numbered XII thereof which alleges that defendants have refused and now refuse to pay to plaintiffs the amount of said tax.

Deny each and every allegation, matter and thing contained in paragraph numbered XII thereof, except as the same is in this paragraph expressly admitted, qualified or explained.

VII

Allege that at the time the assessment was levied against said personal property it was part of the general mass of property in the State within the County of Merced, State of California; that for a long time prior thereto, at that time and thereafter said property had received the protection of the laws of the State of California and for purposes of taxation such property at the time of said assessment had its situs in California, and in Merced County therein, and was not in interstate or foreign commerce and did not constitute an export.

Wherefore, defendants pray that judgment be entered dismissing the complaint, granting to defendants their costs and disbursements herein and for such other and further relief as to the Court may seem just and equitable.

[fol. 27] (S.) Claude H. Adams, District Attorney of Merced County. (S.) William R. Elam, Deputy District Attorney of Merced County, Attorneys for Defendants.

[fol. 28] [File endorsement omitted]

IN SUPERIOR COURT OF MERCED COUNTY

[Title omitted]

REQUEST FOR ASSIGNMENT OF JUDGE—Filed August 21, 1946

To the Chairman of the Judicial Council of the State of California:

Whereas, the above entitled action involves the question of the right of the County of Merced to tax certain personal property and the question of the right of the plaintiff to recover such taxes paid under protest, and

Whereas, it is stipulated and agreed by and between the [fol. 29] parties to said action that jury trial in said action be waived, and

Whereas, it is stipulated and agreed by and between the parties to said action that any one of the hereinafter named judges is a disinterested judge from a neutral county;

Now, therefore, the Superior Court of the State of California, in and for the County of Merced, respectfully requests the Judicial Council of the State of California to assign one of the following named judges to hear said cause and all proceedings in connection therewith:

Honorable Peter J. Shields of Sacramento County;
Honorable A. F. Bray of Contra Costa County;
Honorable Andrew R. Schottky of Mariposa County.

Dated this 14th day of August, 1946.

H. S. Shaffer, Judge of the Superior Court, Presiding.

[fol. 30] [File endorsement omitted]

IN SUPERIOR COURT OF MERCED COUNTY

[Title omitted]

STIPULATION FOR SETTING CASE FOR TRIAL—Filed October 17, 1946

Whereas, the above entitled action involves the question of the right of the County of Merced to tax certain personal property and the question of the right of the plaintiff to recover such taxes paid under protest, and

Whereas, it has been stipulated that a jury trial in said action be waived, and

Whereas, the issues raised by the complaint and the answer thereto have been joined and the matter is now ready for trial.

Now, therefore, it is hereby stipulated and agreed by [fol. 31] and between the attorneys for the parties to said

action that the trial of the above entitled action be set by the clerk of said court for November 8, 1946, at 10 o'clock A.M.

Ward, Kellogg & Simmons, By Betsy FitzGerald Rahn, Attorneys for plaintiff. Claude H. Adams, District Attorney of Merced County, By Claude H. Adams, Attorney for defendants.

[fol. 32] IN SUPERIOR COURT OF MERCED COUNTY

[Title omitted]

MINUTE ENTRY—Filed November 8, 1946

Hearing on the above entitled matter coming on regularly at this time, Betsy FitzGerald Rahn and S. D. Kellogg, of counsel for plaintiffs, and Claude H. Adams and A. R. Scanlon, of counsel for defendants, appear in court.

Counsel for plaintiffs and defendants present authorities and argument, and the matter is submitted to court on briefs 10-10 and 5.

[fol. 33] [File endorsement omitted]

IN SUPERIOR COURT OF MERCED COUNTY

[Title omitted]

STIPULATION AND AGREED STATEMENT OF FACTS—Filed July 5, 1946

It is hereby stipulated by and between Claude H. Adams, District Attorney of Merced County, attorney for Defendants in the above entitled action, and Ward, Kellogg & Simmons, attorneys for Plaintiffs in the above entitled action, that the above entitled case may be submitted to the Court upon an agreed Statement of Facts. It is further stipulated that all of the necessary and indispensable parties to this action are before the Court, but if the Court should determine that other parties should be served and brought before the jurisdiction — this Court, that the aforesaid attorneys stipulate and agree to accept service on behalf of said

[fol. 34] parties or cause service to be made, in which event the pleadings herein shall be made to conform to include such additional parties. In case additional parties are brought into the case and they or their attorneys stipulate and agree to the Agreed Statement of Facts, the case shall proceed; but in the event an agreement cannot be reached with said additional parties, then subject to the discretion of the Court, testimony shall be heard as to the controverted points only. It is further stipulated by the respective counsel for the parties that the following facts shall be submitted to the Court as the Agreed Statement of Facts in the said action, to-wit:

Prior to November 11, 1944, negotiations were entered into between Empresa Siderurgica, S.A. of Medellin, Colombia, South America, a corporation duly organized and existing under the laws of Colombia, South America, and having its principal place of business at Medellin, Colombia, South America, and Henry J. Kaiser Company, a corporation, duly organized and existing under the laws of the State of Nevada and having its principal place of business at 1522 Latham Square Building in the City of Oakland, County of Alameda, State of California, for the purchase of the Yosemite Portland Cement Plant, its machinery and equipment, located near the City of Merced in the County of Merced, State of California.

Thereafter, on November 11, 1944, Henry J. Kaiser Com-[fol. 35] pany entered into a written contract for the sale to Empresa Siderurgica, S. A. of that certain property known as Yosemite Portland Cement Plant, located in the County of Merced, State of California, a copy of which contract is attached hereto, marked Exhibit "1" and incorporated herein by reference.

On December 2, 1944, Vanderburgh & Co., Inc., an export-import corporation, was designated as forwarding agent in the place of Frank P. Dow, Inc., and said Vanderburgh & Co., Inc., a corporation duly organized and existing under the laws of the State of California, having its principal place of business at 220 Montgomery Street in the City and County of San Francisco, State of California, entered into a contract with Bigge Drayage Co., duly authorized to conduct, among other things, a storage and warehouse business and a general trucking, hauling, transferring and express

business, and a common carrier by motor vehicle duly licensed as such common carrier by the Interstate Commerce Commission to engage in interstate and foreign commerce, to dismantle the said cement plant, disassemble the equipment, package the same for shipment, and deliver said cement plant for shipment to Medellin, Colombia, S.A. That said cement plant was delivered by Bigge Drayage Co. to the Atchison, Topeka and Santa Fe Railway Co. at the plant site for transportation by rail to the point of embarkation; that all of the plant was shipped from the point of embarkation [fol. 36] by water carrier to Colombia, South America. Attached hereto and incorporated by reference are the following: Exhibit "2", copy of contract between Vanderburgh & Co., Inc. and Bigge Drayage Co.; Exhibit "3", Photostatic copy of certificate of convenience and necessity issued by Interstate Commerce Commission to Bigge Drayage Co.; and, Exhibit "4", copy of Articles of Incorporation and Amendment, Bigge Drayage Co.

For the purposes of this statement of facts and to denote the various companies and contracts, we refer to the Yosemite Portland Cement Plant as "cement plant"; Henry J. Kaiser Company as "Kaiser Company"; Empresa Siderurgica, S.A. as "Siderurgica"; Vanderburgh & Co., Inc. as "Vanderburgh"; Bigge Drayage Co. as "Bigge"; the contracts between Henry J. Kaiser Company and Empresa Siderurgica, S.A., dated November 11, 1944, as "Kaiser contract"; and the contract between Vanderburgh & Co., Inc. and Bigge Drayage Co., dated December 2, 1944, as "Bigge contract".

At the time of the execution of the Kaiser contract or shortly thereafter, there was deposited in escrow $50,000 in accordance with Article V of the Kaiser contract.

Article IV of the Kaiser contract (Exhibit "1") provides as follows:

"IV. Parties hereto expressly agree that title to the cement plant with the exception of the items set out in "Exhibit B" shall be transferred to and vest in Purchaser, and Frank P. Dow, Inc., as Forwarding Agent and Customs [fol. 37] Broker for Purchaser, or such other Forwarding Agent and/or Customs Broker as may be hereafter elected by Purchaser, shall coincidentally take delivery from Seller for preparation for shipment and for shipment to Pur-

chaser in the Republic of Colombia, immediately upon the occurrence of the following two conditions:

"A. The issuance by the appropriate government officials of the Export Permit or License required by Article III above; and

"B. The establishment of a letter of credit in accordance with Article V hereof.

"After such transfer of title, all risk and liability for any loss or damage to the cement plant, of any nature whatsoever, shall be upon the Transfer Agent and/or Purchaser, and Seller shall be relieved of any risk and liability."

The effective date of the Bigge contract was provided for by Paragraph 10, which we quote as follows:

> "10. It is specifically agreed by forwarding Agent and Contractor that the effective date of this contract shall be immediately upon the occurrence of the last of the following three conditions, at which time it shall become operative and binding upon the respective parties, provided such effective date is on or before Ninety (90) days from date hereof, unless extended at the option of Contractor:
>
> [fol. 38] "A. The approval of this contract by a duly authorized agent of Purchaser; and
>
> "B. The issuance by the appropriate government officials of an export permit or license required by Article III of said Exhibit One.
>
> "C. Notice approved by Seller to Contractor that Purchaser has acquired title and Forwarding Agent has right to possession."

On December 15, 1944, the Foreign Economic Administration in Washington, D. C. issued Export License SP #2086 to the Kaiser Company, a photostatic copy of which License is attached hereto marked Exhibit "5" and incorporated herein by reference.

On January 3, 1945, a letter of credit covering the balance of the purchase price of said cement plant was deposited with the Bank of America, N. T. & S. A., in favor of the Kaiser Company, a copy of which is attached hereto marked

Exhibit "6" and incorporated herein by reference.

On January 3, 1945, a letter was delivered to Bigge from Vanderburgh, approved by Kaiser Company, which provided as follows:

> "In accordance with Paragraph 10 C of our Contract with you dated December 2, 1944, you are hereby notified that on this date purchaser acquired title and we took delivery of the Cement Plant, and the undersigned as Forwarding Agent has the right to posses-
> [fol. 39] sion."

a copy of which letter is attached hereto marked Exhibit "7" and incorporated herein by reference.

Thereupon, on said date, January 3, 1945, Vanderburgh & Co., Inc. and Bigge Drayage Co. entered into possession of the said plant and immediately began to dismantle and disassemble the said plant and package it on the site, in preparation for shipment abroad to Colombia, South America.

On or about January 18, 1945, Kaiser Company gave to Vanderburgh a power of attorney to do and perform on its part and behalf any thing or act necessary or proper in connection with the transportation or exportation of any merchandise shipped under export license SP#2086 issued to Kaiser Company and covering the said cement plant; copy of said corporation power of attorney is attached hereto marked Exhibit "8" and incorporated herein by reference.

The (a) dismantling, (b) packaging and (c) delivery to the Atchison, Topeka and Santa Fe Railway Co. by Bigge and the (d) shipping operations and (e) actual shipment of the said cement plant and equipment continued expeditiously with due regard for war time shipping conditions throughout January, 1945 and the succeeding months; the packages being labeled at the plant site consigned to Empresa Siderurgica, S. A., Medellin, Colombia, South America.

On March 5, 1945, J. Emmett McNamara, County Assessor of Merced County assessed personal property taxes in the sum of Nine Thousand Ninety Dollars ($9,090.00) [fol. 40] against the said cement plant, identified as "personal property located on S½ of S¼ of Section 12-7-13"

and valued at Three Hundred Thousand Dollars ($300,000.00). Copy of the assessment statement for personal property taxes is attached hereto marked Exhibit "9", and incorporated herein by reference. At the time of such assessment, twelve per cent (12%) of the dismantled plant were out of the jurisdiction of the County of Merced. Attached hereto is a letter from Bigge giving an estimated status of the plant as of March 5, 1945; this letter is marked Exhibit "10" and is incorporated herein by reference.

Thereafter, on August 31, 1945, Empresa Siderurgica, S. A. and Vanderburgh & Co., Inc. as Forwarding Agent on behalf of itself and Empresa Siderurgica, S. A., paid under protest the personal property tax on the said cement plant and equipment in the amount of Seven Thousand Nine Hundred Ninety-nine Dollars and Twenty Cents ($7,999.20) to the Assessor's office, County of Merced. Copy of the receipt for such tax paid under protest is attached hereto marked Exhibit "11" and incorporated herein by reference.

On September 1, 1945, upon the recommendation of J. Emmett McNamara, County Assessor of the County of Merced, the Board of Supervisors of the County of Merced voted to reduce the assessment valuation from the Three Hundred Thousand Dollars ($300,000.00) to Two Hundred [fol. 41] Sixty Four Thousand Dollars ($264,000), said reduction being made by reason of the fact that the said twelve per cent (12%) of such assessed property was out of the jurisdiction of the County of Merced on the date of the assessment of the tax, March 5, 1945. Copy of excerpt from the minutes of the Board of Supervisors of Merced County, September 1, 1945, is attached hereto marked Exhibit "12" and incorporated herein by reference.

On January 18, 1946 the entire plant had been packaged and shipped out of and had left the County of Merced, and on January 29, 1946 the whole of the said plant covered by the said contract had been completely shipped out of the State of California and the United States. Attached hereto marked "Exhibit "13" and incorporated herein by reference is a list of the cars billed and shipped comprising all of said Yosemite Portland Cement Plant.

Thereafter this present action was initiated by Empresa Siderurgica, S. A. and Vanderburgh & Co., Inc. to recover

the amount of the aforesaid personal property taxes paid under protest to Defendants herein.

Dated this 5th day of July, 1946.

Ward, Kellogg & Simmons, by (S) Betsy FitzGerald Rahn, Attorneys for Plaintiffs, Claude H. Adams, William R. Elam, Attorneys for Defendants.

[fol. 42] EXHIBIT "1"

Contract of Sale

This contract dated this 11th day of November, 1944 by and between the Henry J. Kaiser Company, a Nevada corporation, having its principal office in Oakland, California, hereinafter called "Seller"; and Empresa Siderurgica, South America, a corporation incorporated under the laws of the Republic of Colombia and having its principal office at Medellin, Republic of Colombia, hereinafter called "Purchaser":

Witnesseth That

Whereas Seller is the owner of that certain cement plant, heretofore known as Yosemite-Portland Cement Plant located at Merced, California, including all machinery, equipment, removable structures, removable facilities, spare parts, supplies and miscellaneous items comprising said plant excluding the land upon which the plant is situated, all of which is hereinafter referred to as the "cement plant."

Whereas Seller is also the owner of certain machinery, equipment, structures, facilities, spare parts, and supplies previously located at a certain quarry at Emory, California, previously operated in conjunction with said Yosemite-Portland Cement Plant, which machniery, equipment, structures, spare parts, and supplies have been dismantled from their previous location and transported to the site of the main plant at Merced, and which for the purposes of this contract shall be included a part of the cement plant as [fol. 43] above described; and

Whereas Purchaser has completely inspected and is fully familiar with said cement plant in its present condition and location and is desirous of buying said cement plant,

with certain specific exceptions hereinafter mentioned in its present condition and as presently situated, for the purpose of exporting the said plant to the Republic of Colombia.

Now therefore the parties hereto do mutually agree as follows:

I. Seller agrees to sell and Purchaser agrees to buy the said plant, subject, however, to the covenants and conditions herein set forth.

II. A. Attached hereto as "exhibit A" and by this reference made a part hereof, is an itemized list of spare parts, supplies and miscellaneous items now located on the premises of the said cement plant. It is agreed that in the event that any item or part thereof listed in said "Exhibit A" is missing and cannot be located and delivered to Purchaser, Purchaser shall be entitled to a reduction in the total purchase price hereinafter provided in an amount equal to the list value of each item or portion thereof which is missing or which cannot be delivered to Purchaser, as such value is shown on said "Exhibit A", provided, however, that any claim for a reduction in price by reason of any such shortage must be asserted by Purchaser within [fol. 44] sixty (60) days after the transfer of title to said cement plant as herein provided, and provided further that Seller shall not be responsible for any items known to be present in the inventory, but damaged or destroyed after the date of execution of this agreement. It is further understood that prior to the expiration of the period within which Purchaser may make claims for items missing, Seller shall have the right to control the withdrawal of any items of inventory and shall have the right during said period to take such action as it deems necessary to protect and recover any items of said inventory. It is expressly understood and agreed that the values listed on said "Exhibit A" are solely for the purpose of determining the amount of deduction for missing items as provided in Article II of this contract and do not represent the sales price of the respective items listed.

B. Seller has delivered to Purchaser an approximate list, prepared by the American Appraisal Company, of the items composing the remainder of said cement plant. All parties fully understand and agree that said list was pre-

pared by a party other than Seller, and that while said list is true and correct to the best of Seller's knowledge and belief, Seller does not guarantee or assume any responsibility for the accuracy or completeness of said list, and that neither said list nor the delivery thereof to Purchaser shall in any way become a part of or affect the terms of [fol. 45] this contract.

C. Certain specific items of machinery, equipment, structures, facilities, parts, supplies, and or other items as listed in "Exhibit B" attached hereto and by this reference made a part hereof, are specifically excluded from the cement plant to be sold to Purchaser under this Agreement, and title to all of said items in "Exhibit B" shall remain in Seller or third party.

D. Purchaser shall purchase said plant in its condition and location as of the date of this agreement. Any loss, damage or destruction of the plant occurring after the date hereof shall be at the risk of Purchaser, except that Purchaser shall be entitled to a credit for items missing from "Exhibit A" as hereinbefore provided and provided further that in the event the parties are unable to obtain the export permit or license referred to in Article III hereof and as a result thereof this agreement is terminated, Purchaser shall not be liable to Seller for any loss, damage, or destruction of any kind to said plant which may have theretofore occurred. Seller, at its own cost, agrees to add Purchaser as a coinsured as its interests may appear to presently existing insurance coverage covering the cement plant, to so remain until transfer of the title to the plant hereunder.

E. Seller expressly warrants that Seller is now the owner of said cement plant and that title to the cement plant shall [fol. 46] vest in Purchaser free of all liens and encumbrances. Seller represents that said cement plant was being operated until July 1, 1944, that Seller purchased said cement plant from its former operator in operating condition as of that time, and Seller warrants that it has not thereafter sold or removed any equipment or property from said cement plant except that listed in "Exhibit B", attached hereto. Seller makes no warranty as to the condition of said plant or any part thereof and no other warranties or representations are made or implied by Seller except as herein expressly set forth.

F. Seller has left certain minor items or property, which Seller did not consider worthwhile to remove, at the quarry above referred to. In the event Purchaser desires any property remaining at the quarry, and which is owned by Seller, it may take the same hereunder without any increase in the purchase price provided that it notifies Seller in writing of its desire to do so at any time after the date hereof and prior to sixty (60) days after the transfer of title to the cement plant as herein provided. Title to said property shall be transferred in the same manner as title to the cement plant is transferred hereunder, and at the same time that title to said cement plant is transferred hereunder or at such time as Purchaser notifies Seller in writing of its election to take said property whichever time shall be later, where is, as is, and subject to all other [fol. 47] conditions of this agreement. Said property shall be removed from the premises at Purchaser's risk and expense within ninety (90) days after the date hereof, or title thereto shall revert to Seller.

III. Both parties agree to use their best efforts to obtain, at the earliest possible date the issuance by the appropriate authorities of the United States Government of an Export Permit or License which will permit the exporting of said cement plant to Purchaser in the Republic of Colombia. The issuance of such Export Permit or License to either Purchaser or Seller shall be compliance with the condition set forth in this Article, provided only that said permit or license shall be sufficient to permit the exporting of said cement plant to the Republic of Colombia as herein specified. In the event that such Export Permit or License is not obtained within forty five (45) days from the date hereof, unless said period shall be extended by mutual agreement of the parties, this contract and all obligations hereunder shall terminate.

IV. Parties hereto expressly agree that title to the cement plant with the exception of the items set out in "Exhibit B" shall be transferred to and vest in Purchaser; and Frank P. Dow, Inc., as Forwarding Agent and Customs Broker for Purchaser, or such other Forwarding Agent and or Customs Broker as may be hereafter elected by Purchaser, shall coincidentally take delivery from Seller [fol. 48] for preparation for shipment and for shipment

to Purchaser in the Republic of Colombia, immediately upon the occurrence of the following two conditions:

A. The issuance by the appropriate government officials of the Export Permit or License required by Article III above; and

B. The establishment of a letter of credit in accordance with Article V hereof.

After such transfer of title, all risk and liability for any loss or damage to the cement plant, of any nature whatsoever, shall be upon the Transfer Agent and/or Purchaser, and Seller shall be relieved of any risk and liability.

V. In consideration of the sale of said entire cement plant, Purchaser agrees to pay to Seller a total purchase price of Five Hundred Fifty-five Thousand Dollars ($555,000.00). The terms of the payment of said purchase price shall be as follows:

A. Immediately upon the execution of this contract, Purchaser will deposit in escrow with the Bank of America, National Trust and Savings Association, San Francisco office, hereafter called "Bank of America", the sum of Fifty Thousand Dollars ($50,000) in lawful money of the United States of America, said sum to be held in escrow until an Export Permit or License is issued as required by the provisions of Article III above, and paid to Seller [fol. 49] immediately upon the presentation to the escrow holder of a photostatic copy or certified copy of said permit or license, in accordance with escrow instructions executed concurrently herewith.

B. Within ten (10) days after the presentation to the escrow holder of a certified copy or photostatic copy of said Export Permit or License as provided in Section A above, Purchaser shall establish an irrevocable letter of credit confirmed by a prime bank in New York City, New York, or San Francisco, California, in a total amount of Five Hundred Five Thousand Dollars ($505,000.00) in lawful money of the United States of America, available by draft at sight, with New York or San Francisco funds payable at par.

C. The terms of said letter of credit shall provide that cash payments shall be made to Seller at San Francisco, California, as follows:

(1) Either party may present to the confirming bank through which payments are to be made, a photostatic copy or certified copy of an Export Permit or License permitting the export of the cement plant to the Republic of Colombia, together with a certificate executed by Seller stating that said permit or License covers the cement plant sold to Purchaser hereunder, and thereafter payments shall be made on the following dates:

[fol. 50] (a) The sum of One Hundred Twenty-six Thousand Two Hundred Fifty Dollars ($126,250.00) forty-five (45) days after the date said copy of the Export Permit or License is presented to the Bank.

(b) The sum of One Hundred Twenty-six Thousand Two Hundred Fifty Dollars ($126,250.00) ninety (90) days after the date said copy of the Export Permit or License is presented to the bank.

(c) The sum of One Hundred Twenty-six Thousand Two Hundred Fifty Dollars ($126,250.00) one hundred and thirty-five (135) days after the date said copy of the Export Permit or License is presented to the bank.

(d) The sum of One Hundred Twenty-six Thousand Two Hundred Fifty Dollars ($126,250.00) one hundred eighty (180) days after the date said copy of the Export Permit or License is Presented to the bank.

(2) In the event shipment of the entire plant from Merced shall be completed prior to the time or times here specified, Purchaser shall deliver to Seller a certificate stating that such removal has been completed, and upon presentation of said certificate to the confirming bank through which [fol. 51] said letter of credit is payable, any balance of the purchase price then payable shall be paid to Seller forthwith.

D. Any and all taxes now or hereafter imposed upon Seller as a result of the sale of said plant, excepting only such taxes as may be based upon the income or profits of Seller and any taxes levied upon any property retained by Seller, shall be for Purchaser's account, and Purchaser shall

reimburse Seller for any such taxes paid by Seller upon the presentation to Purchaser of an invoice covering such payments. With respect to any such taxes levied against and paid by Seller and reimbursed by Purchaser as herein provided, Purchaser shall have the right to institute and maintain in Seller's name such litigation as Purchaser may deem necessary or desirable to test the legality or proper levy of such taxes. Seller shall be liable for all property taxes which accrue against said cement plant prior to vesting of title in Purchaser, but Purchaser shall be liable for all such property taxes which accrue against said cement plant after title vests in Purchaser.

E. The damages that may result to Seller from any breach of this contract by Purchaser will be difficult, if not impossible, of ascertainments. In the event that Purchaser fails to establish the letter of credit in the manner and within [fol. 52] the time required by Article V hereof, or fails to perform any condition or covenant contained in this contract, Seller may, at its option, in lieu of any other remedy allowed to it by law, retain the initial payment of Fifty Thousand Dollars ($50,000.00) as liquidated damages.

VI. Purchaser shall have a reasonable time after the issuance of the Export Permit or License and the establishment of the letter of credit to remove the plant from the property of Seller, but in any event Purchaser may leave the cement plant or any portion thereof on the premises until Purchaser is able to obtain required shipping space. Upon completion of the removal of the plant, Purchaser shall leave the property in an orderly condition, and title to any property then remaining on the premises shall revert to Seller. Purchaser may leave exposed any foundations and structures which Purchaser does not desire to remove.

VII. This contract shall be the entire agreement between the parties hereto with respect to the purchase and sale of said cement plant and the components thereof, and the obligations of neither party hereto shall be in any way affected by or dependent upon any condition, representation or agreement not expressly contained in the provisions hereof:

IX. Any notice required or permitted hereunder may be given by either party or its authorized representative to [fol. 53] the other party by deposit of the same in the United

States mail or in the Colombian mail, as airmail registered matter, postage prepaid, and addressed as follows:

If to Seller: Henry J. Kaiser Company. Attention: Mr. E. E. Trefethen, Jr., 1522 Latham Square Building, Oakland 12, California.

If to Purchaser: Empresa Siderurgica, S. A. Medellin, Colombia, S. A.

or such other place as may be designated in writing by the respective parties.

In Witness Whereof the parties hereto have executed this contract as of the day and year first above written.

Henry J. Kaiser Company, (S.) E. E. Trefethen, Jr., Vice President; Empresa Siderurgica, S. A., by (S.) Julian Cock Arango.

[fol. 54] EXHIBIT "2"

Contract for Dismantling and Preparation for Shipment of Yosemite-Portland Cement Plant

Vanderburgh & Co., Inc., a California corporation, having its principal office at San Francisco, California, acting as Forwarding Agent (hereinafter referred to as "Forwarding Agent") for Empresa Siderurgica, S. A., a corporation incorporated under the laws of the Republic of Colombia and having its principal office at Medellin, Republic of Colombia (hereinafter referred to as "Purchaser"), and Bigge Drayage Co., a California Corporation, having its principal office at Oakland, California (hereinafter referred to as "Contractor"), hereby agree that the following work shall be performed for the compensation and upon the terms and conditions hereinafter set forth:

1. Purchaser has heretofore, on November 11, 1944, entered into a contract with Henry J. Kaiser Company (hereinafter referred to as "Seller"), which said contract, including its exhibits, is attached hereto, marked "Exhibit One," for the purchase of the Yosemite-Portland Cement Plant, located at Merced, California, and the quarry equipment formerly located at Emory, California, including all of the machinery, equipment, removable structures, removable facilities, spare parts, laboratory, supplies and miscellane-

ous items comprising said plant, all of which plant and quarry equipment is the subject of this contract and is hereinafter referred to as the "Cement Plant". All of the parties hereto acknowledge that they have read said Exhibit One, and know the contents and terms thereof.

[fol. 55]

2. The Forwarding Agent hereby represents that he has been designated by Purchaser to take delivery of said Cement Plant from the Seller for preparation for shipment and for shipment to Purchaser in the Republic of Colombia.

3. The Forwarding Agent further represents that he has agreed with Purchaser that Purchaser may designate some other forwarding agent and/or customs broker in substitution for him at any time, and that in the event of substitution, he has agreed to deliver possession of said Cement Plant to such other forwarding agent and/or customs broker as may be designated by Purchaser, upon written notice by Purchaser that such other forwarding agent and/or customs broker has been selected in his place and stead.

4. In the event the Purchaser exercises its right to substitute other forwarding agents and/or customs brokers, written notice of such substitution and/or substitutions shall be given to the Contractor, and the parties so substituted shall execute written consents to this agreement and deliver copies thereof to Contractor, and the Contractor agrees that the requirements of this contract shall remain in full force and effect as though no substitution and/or substitutions had been made and as if said substituted forwarding agent or agents and/or customs broker or brokers had

[fol. 56]

been named as an original party to this agreement.

5. Forwarding Agent and Purchaser have appointed Vanderburgh & Co., Inc., a New York corporation, 25 Beaver Street, New York, New York, to act as Fiscal Agent (hereinafter referred to as "Fiscal Agent") for Forwarding Agent and Purchaser for the purpose of making payments required by this contract.

6. For the purposes of this agreement, Vanderburgh & Co., Inc., is also designated an authorized general agent of Purchaser.

7. The Forwarding Agent and Purchaser shall select an individual, whose name and address shall be communicated to Contractor before the work hereunder is commenced, to

act as the joint representative (hereinafter referred to as "Representative") at the site of the work. Such Representative has authority to authorize in writing exceptions to dismantling, packing and shipping specifications contained herein.

8. The Purchaser has employed Kaiser Engineers, a corporation (hereinafter referred to as "Kaiser"), to perform consulting engineering services in connection with the dismantling and preparation for shipment of said Cement Plant.

9. It is expressly understood by all of the parties hereto that the Forwarding Agent cannot and shall not enter [fol. 57] into any other contract or incur any other obligation in connection with this contract, or the work covered hereby, without first obtaining the written authorization of the Purchaser, and any such other contract entered into, or obligation incurred, without such written authorization, shall be null and void as to all parties concerned, and shall not be binding upon either the Purchaser or the Forwarding Agent. For the purposes of this paragraph, however, approval by the Fiscal or General Agent shall be considered approval by Purchaser.

10. It is specifically agreed by Forwarding Agent and Contractor that the effective date of this contract shall be immediately upon the occurrence of the last of the following three conditions, at which time it shall become operative and binding upon the respective parties, provided such effective date is on or before Ninety (90) days from date hereof, unless extended at the option of Contractor:

A. The approval of this contract by a duly authorized agent of Purchaser; and

B. The issuance by the appropriate government officials of an export permit or license required by Article III of said Exhibit One.

C. Notice approved by Seller to Contractor that Purchaser has acquired title and Forwarding Agent has right to possession.

[fol. 58] 11. The Contractor shall supply all supervision, labor, tools, implements, machinery, equipment and materials, which in its judgment are necessary to dismantle said

Cement Plant, and to pack and prepare the same for shipment in such manner as Contractor deems appropriate and in accordance with the best practices of the export trade, and load on cars for shipment to a designated port in the United States of America for shipment to Purchaser in the Republic of Colombia.

12. The work of dismantling the Cement Plant is to be performed in accordance with the terms of this contract and in the manner which, in Contractor's judgment, is likely to do the least possible damage to the various parts thereof and to assure safe carriage to destination in the Republic of Colombia.

13. When notified that steamship space is available and permit has been obtained by the Forwarding Agent from the Association of American Railroads, it shall be the duty of the Contractor to exercise reasonable diligence and good faith to obtain and to exert every effort to load such railroad cars at Cement Plant siding as are necessary to transport such parts of the Cement Plant as are designated to the port designated. In designating items for loading the Forwarding Agent shall consult with Contractor in selecting items in such manner as will result in the most economical loading Contractor, on behalf of Forwarding Agent, [fol. 59] shall obtain signed railroad bills of lading marked for export and consigned to Forwarding Agent, care of a steamship company, freight collect. For the purposes of this paragraph, the burden of exerting every effort will be satisfied if Contractor works Eight (8) hours per day and Six (6) days per week.

14. Contractor shall take at least one photograph of each machine or piece of equipment before dismantling said machine or piece of equipment, and shall also take at least one photograph after such machine or piece of equipment is dismantled. Such photographs shall be numbered and bear the same identification marks as the parts of which they are pictures, and shall be kept in numerical order, or such other adequate filing system, as may be approved by Representative so as to be readily accessible to persons reassembling the plant.

15. Within Ten (10) days after the effective date of this contract, the Contractor shall enter upon and undertake the

work of dismantling the Cement Plant and the preparation for shipment thereof, and shall continue the dismantling and preparation for shipment of the dismantled parts without cessation of work until said Cement Plant has been completely dismantled and prepared for shipment, with the exception of the traveling crane and crane bay. Completely dismantling the Cement Plant does not involve any of the following items:

[fol. 60] A. Removing foundations.
B. Filling of any excavations.
C. Removing concrete smokestacks.
D. Exhibit B attached to Exhibit One.
E. Rail ties in place.

Said Cement Plant shall be prepared for shipment in the following order:

First: The laboratory equipment.
Second: All of the spare parts and machinery listed in Exhibit A of Exhibit One.
Third: The quarry equipment.
Fourth: The machinery and shop equipment.
Fifth: The balance of the plant and equipment intended to be shipped in such order as the Contractor may determine.

Items First and Second above shall be prepared for shipment within Fifty (50) days from the effective date of this contract.

16. The Contractor shall complete the dismantling and preparation for shipment within Six (6) months from the effective date hereof. The dismantled and packed equipment shall be loaded on cars as directed by the Forwarding Agent, in accordance with paragraph 13. If through no fault of the Contractor, completion of shipment of the Cement Plant is delayed beyond one (1) year from the effective date hereof, Contractor shall be discharged from [fol. 61] all of his unperformed obligations under this contract, except the obligation to dismantle the traveling crane and crane bay, if the same is not then dismantled, and Contractor shall be paid the entire undisbursed balance of the contract price less the Contractor's estimated cost of dismantling the traveling crane and crane bay and load-

ing the unshipped portion of the Cement Plant on railroad cars at the site. If at any time after twelve (12) months and within eighteen (18) months after the effective date hereof, the Contractor is called upon to load the unshipped portion of the Cement Plant, and there is an increase in the Contractor's costs, the Contractor shall be paid the amount of such increase in costs, plus the undisbursed balance of the contract price, said additional costs to be subject to agreement between the parties before the work is to be done.

17. For the purposes of this contract one kilo equals 2.2 pounds and one thousand kilos equals 2200 pounds.

18. All separations shall be made at the point of joinder, and there shall be no cutting or disassembling of any part of the Cement Plant which will have as its effect the weakening of the structure or parts when such structure or parts are reassembled, except as may be specifically directed in writing by the Representative.

19. All cylindrical parts are to be separated at the point of joinder in sections not more than 25′ in length and 125″ [fol. 62] in diameter; provided, however, that if any single section without a point of joinder is more than 25′ in length or 125″ in diameter, said section shall be shipped as a unit and shall not be cut or divided to meet the above limitations. Said cylindrical parts which are of sufficient diameter are to be used to stow other parts of smaller size inside, including, but not limited to, other cylindrical parts, corrugated iron, rails and wood pieces. The parts stowed inside of the cylindrical pieces shall be well nested, and wedges, braces or blocks inserted where necessary in Contractor's judgment to hold the parts securely in place and prevent slipping or shifting. The parts stowed inside of the cylindrical pieces shall not exceed the length of the cylindrical pieces. Each cylindrical section when packed shall not exceed 25 thousand kilos gross weight.

20. All parts other than the cylindrical sections shall be separated at their point of joinder in sections not more than 25′ in length, 140″ in width and 80″ in height and having a gross weight of not more than 5 thousand kilos. Provided, however, that if any single section without a point of joinder is more than 25′ in length, 140″ in width and 80″

in height or weights more than 5 thousand kilos, said section shall be shipped as a unit and shall not be cut or divided to meet the above limitations. The Contractor shall not leave any parts of the plant machinery or equipment projecting which would leave such parts susceptible to damage [fol. 63] in transit.

21. The hubs of the machines in the primary and finishing mills shall not be removed.

22. All flanges and flange sections shall be removed.

23. If the Representative believes the limitations contained in any specifications herein contained are unnecessary, or improper, he may in his absolute discretion waive such limitation, in writing, as to any particular piece or part of said Cement Plant.

24. All delicate parts, such as laboratory equipment, glass, switchboard or control apparatus, must be securely and carefully packed in cases so as to prevent breaking or crushing in shipment.

25. Any motors, machinery or other parts, such as electrical equipment, which would be damaged by exposure, shall be packed so as to prevent exposure, corrosion or other damage.

26. Any part or machine which, in Contractor's judgment, is too heavy to be crated easily and which, in Contractor's judgment, is not likely to be damaged in shipment and which, in the ordinary case of shipping for export, would usually be mounted on skids, shall be so mounted.

27. Tank plates shall be bundled, and shall also be nested wherever possible.

28. The Contractor may have for packing purposes the free use of any of the wood framing or any of the material [fol. 64] contained in Exhibit A attached to Exhibit One now at the site of said Cement plant and owned by Purchaser.

29. All new and unused bricks of any kind must be crated. Such crates not to exceed 150 kilos gross packed weight.

30. All magnesite bricks or high alumina bricks must be removed and packed in such form and in such containers as the Contractor may determine.

31. Upon written request of the Representative the Contractor will set aside any other refractory bricks and submit proposal to Representative and Fiscal Agent to cover the cost of packing said bricks. Upon written authorization from said Fiscal Agent, Contractor may then pack at additional cost authorized.

32. Any part, piece, crate, case or machine which is to be shipped as a unit shall be clearly and plainly marked and numbered in numerical order, commencing with number one, as follows:

SIDERURGICA
Buenaventura

1

33. The Contractor shall match-mark all parts of the plant and equipment in accordance with a method approved by Kaiser, and all machines must have a master identification mark. All manufacturers' identification marks and/or serial numbers shall be preserved. All marking and [fol. 65] numbering shall be done with waterproof paint or paint covered with shellac.

34. The Contractor shall prepare in sextuplicate a complete packing list, enumerating, listing and describing every article which is prepared for shipment, including the individual items packed in each case or crate. Such list shall contain the following information:

Number
Type of packing
Material (packing list)
Net Lbs.
Gross Lbs.
Net Kilos
Gross Kilos
Measurements

The Contractor shall deliver to the Representative at the Cement Plant site original copy of the packing list and shall mail four (4) copies to the Forwarding Agent as promptly as each sheet is prepared.

35. The Representative, without risk to Contractor, shall have the right to withdraw any piece or part of the Cement Plant which may be in need of repairs from the custody of the Contractor and to have same repaired and returned to the Contractor at job site for carting and/or packing for shipment.

36. Forwarding Agent shall pay, or cause to be paid, [fol. 66] to Contractor as and for compensation for the performance of this Contract the full sum of One Hundred and Twenty Thousand Dollars ($120,000.00) as follows:

On or before the Tenth day of each month following the effective date hereof, the Contractor shall submit to Kaiser a progress estimate covering the work performed up to the close of the preceding month. The Forwarding Agent shall pay, or cause to be paid, to the Contractor, through Fiscal Agent, progress payments equal to Ninety-five Per Cent (95%) of the total sum due as shown by the progress estimate as approved by Kaiser. Payment shall be made to Contractor at its Oakland office not later than the end of the month following the month to which the estimate relates. Fiscal Agent shall withhold Five Per Cent (5%) from the approved progress estimates, pending final completion of this contract. Upon completion of the contract the amount withheld shall be paid to Contractor by Fiscal Agent, but if through no fault of the Contractor, completion of shipment of the Cement Plant is delayed beyond One (1) year from the effective date hereof, said payments so withheld shall be paid at the expiration of said One (1) year period.

37. It is specifically understood that no payment made under this contract, except the final payment, shall be evidence of the performance of this contract either in whole or in part, and no payment, including final payment, shall be [fol. 67] construed to be an acceptance of defective or improper workmanship.

38. The Contractor shall reimburse the Fiscal Agent for the electric power used at the plant from and after the date of commencing work under this contract until such time as he shall notify the Fiscal Agent in writing that the dismantling work has been completed, except for the traveling crane, and that he will no longer require the use of said electric power for dismantling purposes. Thereafter the

Contractor shall have the use of the electric power without charge for the operation of the traveling crane.

The Fiscal Agent shall pay for the electric power on standby charge and shall charge the Contractor's account for the amount thereof in accordance with this paragraph.

39. The Contractor shall neither have nor assume any liability nor responsibility for any of the property to which contract relates, save and except that the Contractor shall be liable for the wilful and negligent acts of its officers, agents, employes and servants, including theft, by any of said persons of any of such property.

40. The Contractor expressly agrees, with respect to the work to be performed under this contract, to maintain the following types and amounts of insurance:

Type of Insurance	Policy Limits of Liability
Contractual Public Liability	$100/$200,000.00
Contractual Property Damage	$100,000.00
[fol. 68] Automobile Public Liability	$100/$200,000.00
Automobile Property Damage	$100,000.00
Rigging—inland marine cargo	$25,000.00
Trucking—inland marine cargo	$25,000.00
Compensation	California Statutory Coverage

41. The Contractor shall be required to furnish to Fiscal Agent Certificates of insurance under said policies for all of the work covered herein, as set forth in paragraph 40 above, which shall provide Ten (10) days' notice to Fiscal Agent before any change or cancellation may be effected.

42. Contractor shall have the free use of any equipment or machinery located on the premises, including the overhead craneway and the RD8 Tractor, provided that the Contractor shall be responsible for any damage to such equipment or machinery resulting from negligent use and wilful injury. Upon notice by the Contractor to the Purchaser that any such items are not in operative condition, Purchaser shall cause them promptly to be put in such condition.

43. Contractor shall employ only union labor for the performance of the work and shall pay such labor the going union rate for both regular time and overtime; provided,

however, that the Contractor shall not be entitled to any [fol. 69] increased compensation because of any overtime which he may be required to pay in order to meet the performance schedule provided for herein.

44. Forwarding Agent shall reimburse Contractor for cost of containers for high alumina brick only.

45. Contractor shall load the items of Cement Plant on railroad cars at the site at the Cement Plant and secure the same when loaded in such manner as in Contractor's judgment shall be necessary and proper and when such property has been loaded upon cars, as aforesaid and receipted for by the carrier, Contractor shall be conclusively presumed to have fulfilled all of its obligations under this contract with respect to the property so loaded, except any obligation incurred by Contractor resulting from negligent or wilful damage to such property.

46. Prior to the effective date of this contract, Fiscal Agent shall provide the Contractor with assurances satisfactory to and approved in writing by Contractor as to form and substance, of the availability of funds in New York, New York, or San Francisco, California, sufficient to pay Contractor all amounts which Contractor shall be entitled to receive from Forwarding Agent under the terms and provisions of this contract. In the event Contractor does not approve said assurances within Ten (10) days after presentation to Contractor by Fiscal Agent, this contract shall be null and void and the same as if this contract had [fol. 70] not been executed.

47. The acceptance by either party of any payment or performance hereunder after the time for such payment or performance or in a manner different from the manner of performance as provided for herein shall not be deemed a waiver of any of the terms or provisions hereof, or of any subsequent default or a consent to any subsequent departure from the terms and provisions hereof.

48. Forwarding Agent shall indemnify Contractor and save it harmless from all damage, loss, cost, liability, claims and expense on account of injury to persons or property, including Contractor's property on the premises of the Cement plant caused by the negligent or wilful acts of For-

warding Agent, its agents, servants, employes and contractors.

49. Any notice or demand that either party hereto desires or may be required to give to or make upon the other hereunder shall be in writing either delivered personally or sent by pre-paid registered mail addressed to the other as follows:

Contractor: Bigge Drayage Co., 24th and Campbell Streets, Oakland 7, California.

Fiscal Agent: Vanderburgh & Co., Inc., 25 Beaver Street, New York 4, New York.

[fol. 71] or to such other address as either may communicate to the other by the means herein prescribed for giving notice. Notice by prepaid registered mail, addressed as aforesaid, shall be deemed fully communicated at the expiration of Seven (7) days from the time of the mailing thereof.

50. It shall be the duty of the Representative, during the progress of the dismantling of Cement Plant and the preparation of the same for shipment to observe and inspect the work of dismantling and preparation for shipment. As each item so dismantled and prepared for shipment is tendered to Representative, together with the packing list therefor, as specified in paragraph 34 hereof, it shall be the duty of Representative to accept the same and execute and deliver to Contractor a receipt therefor on a form provided by Contractor, provided that all bona fide exceptions which may have been made by the Representative, as provided herein, have been adjusted in accordance with the provisions of this contract. Anything in this agreement to the contrary notwithstanding, such receipt shall be conclusive evidence that Contractor has fulfilled his obligations to dismantle and prepare for shipment the items receipted for in the manner required by this contract. The Contractor represents that each item or package contains the item enumerated on the packing list at the time of delivery, and the receipt by the Representative does not acknowledge correctness of contents of closed container by Forwarding [fol. 72] Agent or Purchaser of the contents.

51. In the performance of the work provided for herein, Contractor shall operate as an independent Contractor and

not as the agent, employe or servant of the Forwarding Agent, and or the Purchaser and or the Fiscal Agent.

52. Contractor shall complete the work provided for herein without causing any mechanics' or materialmen's liens to be imposed upon the Cement Plant or the property on which it is situated.

53. The Contractor shall promptly refer any question as to interpretation of the specifications or manner or method of performing the work covered herein to the Representative, and if the Contractor and the Representative agree on the question, their determination thereof shall be final. If the Contractor and the Representative disagree on the question it shall be immediately referred to Kaiser, and Kaiser's determination thereof shall be final.

54. The Contractor shall not assign or transfer any part or all of this contract, nor shall the Contractor assign any moneys due or to become due hereunder without prior written consent of the Fiscal Agent, and any attempted assignment hereunder without such prior written consent shall be null and void. No drafts for subcontracted work will be allowed.

55. Contractor shall incur no liability to purchaser because of any delays in performing any of its obligations [fol. 73] hereunder or because of its inability to perform any of such obligations when, without the fault or negligence of Contractor, any such delays or inability to perform results from fires, floods, strikes, labor difficulties of any kind, accidents, acts of God or of the public enemy, embargoes, delay in transportation, non-availability of labor or materials, or because of any other causes or contingencies beyond Contractor's control and whether the same as or different from the causes and contingencies hereinbefore enumerated. Contractor shall promptly notify Purchaser of any such cause or contingency delaying or interfering with the performance of any of its obligations hereunder.

56. If Forwarding Agent shall default in the performance of any of its obligations hereunder, and if such default shall continue after communication of Fifteen (15) days' notice in writing to Forwarding Agent, specifying the nature of such default, Contractor, at its option, shall be released from all further obligations hereunder, without prejudice

to any other rights or remedies available to Contractor on account of such default, the Contractor's rights and remedies being cumulative. Such release shall not absolve Forwarding Agent from paying all sums payable under progress estimates to date to Contractor at the time of such release. The full amount recoverable hereunder shall not exceed the full amount recoverable by Contractor from Forwarding Agent under this contract.

[fol. 74] 57. If the Contractor fails to complete said work within such time, or refuses or fails to comply with any of the other terms and conditions of this contract, and if such default shall continue after communication of Fifteen (15) days' notice in writing to the Contractor, specifying the nature of such default, the Forwarding Agent and/or the Purchaser may terminate its right to proceed with the work or any part thereof. In such event, the Forwarding Agent may take over the work and prosecute the same to completion by contract, or otherwise, and the Contractor shall be liable to the Forwarding Agent and/or the Purchaser for any excess costs necessarily incurred in good faith and occasioned thereby.

58. Wherever in this contract anything is to be done by the Contractor in accordance with his judgment or discretion, that judgment or discretion shall be exercised by the Contractor in good faith.

In Witness Whereof, the parties hereto have through their duly authorized representatives executed this contract this 2nd day of December, 1944.

Vanderburgh & Co., Inc., Forwarding Agent (a California corporation), by (S.) Lucas A. Powe, Vice President. Bigge Drayage Co., Contractor, by (S.) Henry W. Bigge, President.

[fol. 75] Approved: Empresa Siderurgica, S. A., Purchaser, by (S.) T. J. Tighe, Authorized Agent.

Accepted: Vanderburgh & Co., Inc., Fiscal Agent (a New York corporation), by (S.) T. J. Tighe, President.

[fol. 76] Supplement to Contract for Dismantling and Preparation for Shipment of Yosemite-Portland Cement Plant

Agreement made December 7th, 1944, between Vanderburgh & Co., Inc., a California corporation, having its principal office in San Francisco, California, acting as Forwarding Agent (hereinafter referred to as "Forwarding Agent") for Empresa Siderurgica, S. A., a corporation incorporated under the laws of the Republic of Colombia and having its principal office at Medellin, Republic of Colombia (hereinafter referred to as the "Purchaser"), and Bigge Drayage Co., a California corporation, having its principal office at Oakland, California, (hereinafter referred to as "Contractor"):

The parties hereto on the 2nd day of December, 1944, entered into the annexed contract for dismantling and preparation for shipment of the Yosemite-Portland cement plant located at Merced, California; and

The parties through a mutual mistake omitted to include therein one paragraph of said contract which had been agreed upon by them for inclusion therein.

In consideration of the premises, it is agreed that the following paragraph, numbered 59, shall be added to and become a part of said annexed contract and shall have the same force and effect as though it were originally written into said contract as executed, to-wit:

[fol. 77] 59. Any property, sales and/or transportation taxes, penalties and interest now or hereafter imposed upon or levied against the Contractor as a result of the dismantling and preparation for shipment of the Cement Plant, shall be for the Forwarding Agent's account, and the Fiscal Agent, on demand, shall reimburse Contractor for such taxes paid by Contractor, if Contractor gives notice to Fiscal Agent within ten (10) days after receipt of notice by Contractor from the taxing authority that such taxes are or will be assessed. Thereafter Forwarding Agent and/or Fiscal Agent shall have the right to institute and maintain in Contractor's name such litigation as Forwarding Agent may deem necessary or desirable to test the legality of the imposition or levy of any such taxes or penalties, said Agents agreeing hereby to indemnify Contractor and save it harmless from all liability, damage, cost and expense arising from or incident to any such litigation.

Contractor further agrees that it will not make any return or report for any such taxes or penalties without first discussing the return or report with the Fiscal Agent, or his designated representative, or attorneys, and shall furnish Fiscal Agent with a copy thereof coincidentally with such return or report being filed.

In the event Contractor does not give notice of the imposition, levy or assessment or any tax, or makes a return or report for any tax or penalty without first discussing the [fol. 78] return or report with the Fiscal Agent, or his designated representative, or attorneys, and or if Contractor does not furnish a copy thereof coincidentally with such return or report being filed as above provided, then such tax shall be paid by Contractor and Contractor shall not be entitled to reimbursement therefor by the Forwarding Agent, Fiscal Agent or Purchaser, or any of them.

In Witness Whereof, the parties hereto have through their duly authorized representatives executed this agreement this 7th day of December, 1944.

Vanderburgh & Co., Inc., Forwarding Agent (a California Corporation), by (S.) Lucas A. Powe, Vice President. Bigge Drayage Co., Contractor, by (S.) Henry W. Bigge, President.

Approved:

Empresa Siderurgica, S. A., Purchaser, by (S.) T. J. Tighe, Authorized Agent.

Accepted:

Vanderburgh & Co., Inc., Fiscal Agent (a New York Corporation), by (S.) T. J. Tighe, President.

[fol. 79] EXHIBIT No. 3

Interstate Commerce Commission

Evidence of Issue of Certificate of Public Convenience and Necessity. No. MC—43716

UNITED STATES OF AMERICA,
District of Columbia, ss:

It is Hereby Certified, that the Interstate Commerce Commission has found that Bigge Drayage Co., a corpora-

tion, Oakland, California, has duly complied with all applicable provisions of the Motor Carrier Act, 1935,* and the requirements, rules, and regulations prescribed thereunder, and, by appropriate order of this Commission, has been granted a certificate of public convenience and necessity, authorizing the said carrier to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges granted the said carrier.

This instrument is evidence of the authority of the holder of the certificate referred to herein to engage in transportation in interstate or foreign commerce in accordance with the provisions of the said certificate. Such certificate is effective from the date therein specified and will remain in effect until terminated as provided in the said act.

Witness the seal of the Interstate Commerce Commission and the hand of its Secretary, at Washington, D. C., this 28th day of January, A. D. 1943.

W. P. Bartel, Secretary. (Seal.)

[fol. 79a] Certificate of Public Convenience and Necessity

No. MC 43716**

Bigge Drayage Co., a Corporation, Oakland, California

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 28th day of January, A. D., 1943

After Due Investigation, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

It is ordered, That the said carrier be, and it is hereby,

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*Part II, Interstate Commerce Act.

**This certificate also embraces the operating rights purchased by the above-named carrier from Louis L. Fitinghoff, Docket Nos. MC 59160 and MC 59160 Sub. 1, pursuant to MC-F 1728, approved October 30, 1942.

granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicles subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

It is further ordered, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

Irregular Routes:

Structural Iron and Steel, and *heavy machinery*,

Between points and places in Alameda and Contra Costa Counties, Calif.

Structural steel,

Between Oakland, Calif., and Sacramento, Calif.

Pipe and *pipe fittings*,

From Alameda, Oakland, and San Francisco, Calif., to points and places within 125 miles of Oakland, including Oakland, with no transportation for compensation on return, except as otherwise authorized.

Machinery, equipment, and *supplies* used or useful in logging, mining, road-building and construction work,

Between points and places in California except those in San Bernardino, Orange, Los Angeles, Riverside, San Diego, and Imperial Counties, Calif., on the one hand, and, on the other, points and places in Nevada.

Between points and places in California, except those in San Bernardino, Orange, Los Angeles, Riverside, San Diego, and Imperial Counties, Calif.

[fol. 79b] *Machinery, equipment*, and *supplies* used or useful in logging, mining, road-building, and construction work, in truckloads,

Between points and places in Idaho and Oregon.

Between points and places in Idaho and Oregon on the one hand, and, on the other, points and places in Nevada and California, except those in San Bernardino, Orange, Los Angeles, Riverside, San Diego, and Imperial Counties, Calif.

Any authority granted herein which is overlapping,

shall not be construed as granting duplicate operating rights.

It is further ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

And it is further ordered, That this certificate shall supersede the certificate issued to the above-named carrier in this proceeding on May 26, 1942, and those issued to the predecessor in interest under Docket Nos. MC 59160 and MC 59160 Sub 1 on July 20, 1942 and July 17, 1940, respectively, which are hereby, canceled; the two latter certificates having been duly transferred to the above-named carrier as set forth in the footnote appended hereto.

By the Commission, division 5.

W. P. Bartel, Secretary. (Seal.)

[fol. 80] EXHIBIT "4"

Filed. In the Office of the Secretary of State of The State of California, Jan. 15, 1931. Frank C. Jordan, Secretary of State. By (Signed) Chas. J. Hagerty, Deputy.

Department of State Corporation Number 142909.

Articles of Incorporation of Bigge Drayage Co., Ltd.

Know All Men by These Presents:

That we, Henry Wilhelm Bigge, Bernice Mable Bigge, and Wilhelmina C. Bigge, a majority of whom are citizens and residents of the State of California, United States of America, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California:

And do hereby certify:

First: That the name of the corporation is Bigge Drayage Co., Ltd.,

Second: That the objects and purposes for which this corporation is formed are the following:

To carry on a general trucking, hauling, transfer and express business, to purchase, lease, or otherwise acquire said business, and to do any and all acts incidental to, or connected therewith.

To transfer, haul, carry, and transport, goods, wares and merchandise, and other personal property of every [fol. 81] kind, nature and description from or to any point of places in the United States or elsewhere by means of electrical, steam, and gasoline cars and vehicles, trucks, trailers, automobiles, airplanes, horses, wagons, boats, or other means or methods of transportation; to contract or arrange with railroad companies, ferry companies, steamboat companies, or other carrier companies or individuals to transfer, haul, carry, or transport, such personal property for and on behalf of this corporation; and generally to do and transact a trucking, hauling and express business with all the rights, privileges, and powers necessary or desirable for the transaction of such business or incidental to the conduct of the same.

To carry on a general trucking, hauling, rigging, constructing and stevedore business, and to manufacture, acquire, deal in, advertise and dispose of trucks, trailers, automobiles, carriages, and other vehicles and kindred appliances; and to trade and deal in draft animals and apparatuses, and other things appertaining or belonging to said business.

To carry on the business of storing and warehousing, and all business necessary or impliedly incidental thereto; to further carry on the business of general warehousing in all its several branches, to construct, hire, purchase, operate, and maintain all and any conveyances for the transportation in storage or otherwise, by land or water of any and all [fol. 82] products, goods, manufactured articles and other personal property; to issue certificates and warrants, negotiable or otherwise, to persons warehousing goods with the Company; and to make all loans upon the security of such goods or otherwise; to manufacture, sell, and trade in all goods usually dealt in by warehouse men; to construct, purchase, take, lease, or otherwise acquire any wharf, pier, dock, or works, capable of being used in connection with the shipping, storage, transportation, and carrying on other business of the Company; and generally to carry on and

undertake any business, undertakings, transactions, or obligations commonly carried on or undertaken by warehouse men; and other business which may from time to time seem to the directors capable of being conveniently carried on in connection with the above or calculated, directly or indirectly, to enhance the value of, or render profitable, any of the Company's properties or rights.

To carry on a general excavating and constructing business and all business necessary or impliedly incidental thereto; to carry on said business in all its several branches, to construct, hire, purchase, operate, lease, maintain and manufacture any and all building materials, tools, machines, appliances, or other personal or real property pertaining or belonging to said business; and generally to carry on or undertake any business, undertakings, transactions or obligations commonly carried on or undertaken [fol. 83] in said business and to engage in any other business which may from time to time seem to the directors capable of being conveniently carried on in connection with the above or calculated, directly or indirectly, to enhance the value of, or render profitable, any of the Company's properties or rights.

To borrow and lend money, with or without security therefor; to make, endorse and issued promissory notes, bills of exchange, bonds, and indentures, and other evidences of indebtedness, to purchase, hypothecate, and encumber by mortgage, deed of trust or otherwise, all and any real or personal property; and to do and transact any and all business and exercise any and all powers necessary, proper, convenient, or incidental to the exercise and enjoyment of the foregoing powers.

The foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the general powers of the Company and the enjoyment thereof as now or hereafter conferred by the laws of the State of California upon corporations organized thereunder.

Third: The principle office for the transaction of business of the corporation will be located in the County of Alameda, State of California.

Fourth: The number of shares which may be issued by this corporation is One Hundred Thousand shares (100,000) of common stock without par value.

[fol. 84] Fifth: The total number of shares of common stock without par value which have been actually subscribed is Thirty shares (30) and the following are the names of the subscribers, the number of shares, respectively, for which they have subscribed and the amount to be paid by them, respectively, for such shares.

Name of Subscriber	No. of Shares Subscribed	Amount to be Paid
Henry Wilhelm Bigge	ten (10) shares	Ten Dollars ($10.00)
Bernice Mable Bigge	ten (10) shares	Ten Dollars ($10.00)
Wilhelmina C. Bigge	ten (10) shares	Ten Dollars ($10.00).

Sixth: The number of directors of this corporation is three; and the names and residences of the persons who are appointed to act until the first annual meeting of the share holders, or until the selection and qualification of their successors, are as follows:

Names	Place of Residence
Henry Wilhelm Bigge	Alameda, California
Wilhelmina C. Bigge	Alameda, California
Bernice Mable Bigge	Oakland, California

In witness whereof, we have hereunto set our hands this — day of December, 1930.

(Signed) Henry W. Bigge, Bernice Mabel Bigge, Wilhelmina C. Bigge.

[fol. 85] State of California,
County of Alameda, ss:

On this 29 day of December A. D. 1930, before me, E. H. Hart, a Notary Public in and for the County of Alameda, State of California, personally appeared Henry Wilhelm Bigge, Bernice Mable Bigge, and Wilhelmina C. Bigge, known to me to be the persons described in and whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In witness whereof, I have set my hand and affixed my official seal the day and year in this certificate first above written.

(Signed) E. H. Hart, Notary Public in and for the County of Alameda, State of California. (Seal.)

[fol. 86] STATE OF CALIFORNIA

Department of State

PAUL PEEK, Secretary of State.

I, Paul Peek, Secretary of State of the State of California, do hereby certify:

That I have compared the annexed transcript with the record on file in my office, of which it purports to be a copy, and that the same is a correct transcript therefrom and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of the State of California this 28th day of May, 1940.

(Signed) Paul Peek, Secretary of State. By (Signed) Chas. M. Hagerty, Deputy. (Seal.)

[fol. 87] Secretary of State of the State of California. May 20, 1940. Paul Peek, Sec'y of State, by Chas. J. Hagerty, Deputy.

Certificate of Amendment of Articles of Incorporation

Bigge Drayage Co., Ltd.

The undersigned, Henry Wilhelm Bigge, President, and Bernice Mabel Bigge, Secretary, do hereby certify that they are, respectively, and have been at all times herein mentioned, the duly elected and acting President and Secretary of Bigge Drayage Co., Ltd., a corporation duly organized and existing under and by virtue of the laws of the State of California, and further that

One: At a special meeting of the Board of Directors of said corporation duly held at its principal office for the transaction of business, at Oakland, California, at 11:00 o'clock, A.M., on the 29th day of April, 1940, at which meeting there were at all times present and acting a quorum of the members of said Board, the following resolutions were adopted:

Whereas, it is deemed by the Board of Directors of this corporation to be to the best interest of this corporation

that its Articles of Incorporation be amended as hereinafter set forth:

Now, therefore, be it resolved that Article First of the Articles of Incorporation of this corporation be amended [fol. 88] to read as follows:

'First: That the name of this corporation is, Bigge Drayage Co.'

And be it further resolved that Article Fourth of the Articles of Incorporation be amended to read as follows:

'Fourth: This corporation is authorized to issue two classes of shares of stock, to be designated, respectively, "Preferred" and "Common"; the total number of shares which this corporation shall have authority to issue is One Hundred Thousand Five Hundred (100,500), and the aggregate par value of all shares that are to have a par value shall be Fifty Thousand Dollars ($50,000.00), and

(a) The number of Preferred shares that are to have a par value shall be Five Hundred (500), and the par value of each share of such class shall be One Hundred Dollars ($100.00); and

(b) The number of Common shares that are to be without par value shall be One Hundred Thousand (100,000).'

And be it further resolved that the Articles of Incorporation of this corporation be amended by adding Article Seventh thereto, which said Article Seventh shall read as follows:

'Seventh: A statement of the preferences, privileges and restrictions granted to or imposed upon the respective classes of shares and/or upon the holders thereof is as follows:

[fol. 89] (a) The holders of Preferred shares shall be entitled to receive out of any funds of this corporation at the time legally available for the declaration of dividends, dividends at the rate of six per cent (6%) per annum of the par value thereof, payable in cash semi-annually, or at such time as the Board of Directors may from time to time determine, when and as declared by the Board of Directors. Such dividends shall accrue from the date of issuance of the respective Preferred shares and shall be deemed to accrue from day to day regardless of whether or not earned or

declared. Such dividends shall be payable before any dividends shall be declared or paid upon or set apart from the Common shares, and shall be cumulative, so that if in any year or years dividends upon the outstanding Preferred shares at the rate of six per cent (6%) per annum of the par value thereof shall not have been paid thereon or set apart therefor, the amount of the deficiency shall be fully paid or declared and set apart for payment, but without interest, before any distribution, whether by way of dividend or otherwise, shall be declared or paid upon, or set apart for, the Common shares.

(b) In the event of a voluntary liquidation, dissolution or winding up of this corporation, the holders of Preferred shares shall be entitled to receive out of the assets of this corporation, whether such assets are capital or surplus of any nature, an amount equal to One Hundred per cent [fol. 90] (100%) of the par value of such Preferred shares, and, in addition to such amount a further amount equal to the dividends unpaid and accumulated thereon, as provided in (a) of this Article Seventh, to the date of such distribution, whether earned or declared or not, and no more, before any payment shall be made or any assets distributed to the holders of Common shares.

In the event of an involuntary liquidation, dissolution or winding up of this corporation, the holders of the Preferred shares shall be entitled to receive out of the assets of this corporation, whether such assets are capital or surplus of any nature, an amount equal to One Hundred per cent (100%) of the par value of such Preferred shares and a further amount equal to the dividends unpaid and accumulated thereon as provided in (a) of this Article Seventh to the date of such distribution, whether earned or declared or not, and no more, before any payment shall be made or any assets distributed to the holders of Common shares.

If upon such liquidation, dissolution or winding up, whether voluntary or involuntary, the assets thus distributed among the holders of the Preferred shares shall be insufficient to permit the payment to such shareholders of the full preferential amounts aforesaid, then the entire assets of this corporation to be distributed shall be distributed ratably among the holders of Preferred shares. A [fol. 91] consolidation or merger of this corporation with or into any other corporation or corporations shall not be

deemed to be a liquidation, dissolution or winding up, within the meaning of this clause.

(c) In the event of any liquidation, dissolution or winding up of this corporation, whether voluntary or involuntary, subject to all of the preferential rights of the holders of Preferred shares on distribution or otherwise, the holders of Common shares shall be entitled to receive, ratably, all remaining assets of this corporation.

(d) This corporation, at the option of the Board of Directors, may redeem the whole, or from time to time may redeem any part of the Preferred shares on any dividend date, by paying therefor in cash One Hundred Two and 50/100 Dollars ($102.50) per share and, in addition to the aforementioned amount, an amount in cash equal to all dividends on the Preferred shares unpaid and accumulated, as provided in (a) of this Article Seventh, whether or not earned or declared, to and including the date fixed for redemption, such sum being hereinafter sometimes referred to as the redemption price. In case of the redemption of a part only of the outstanding preferred shares, this corporation shall designate by lot, in such manner as the Board of Directors may determine, the shares to be redeemed, or shall effect such redemption pro rata. At least sixty (60) days' previous notice by mail, postage prepaid, shall be [fol. 92] given to the holders of record of the Preferred shares to be redeemed, such notice to be addressed to each such shareholder at his postoffice address as shown by the records of this corporation, on or after the date fixed for redemption and stated in such notice, each holder of Preferred shares called for redemption shall surrender his certificate evidencing such shares to this corporation at the place designated in such notice and shall thereupon be entitled to receive payment of the redemption price. In case less than all of the shares represented by any such surrendered certificate are redeemed, a new certificate shall be issued representing the unredeemed shares. If such notice of redemption shall have been duly given, and if on or before the date fixed for redemption funds necessary for the redemption shall have been set aside so as to be and continue available therefor, then notwithstanding that the certificates evidencing any preferred shares so called for redemption shall not have been surrendered, the dividends

with respect to the shares so called for redemption shall cease to accrue after the date fixed for redemption, and all rights with respect to the shares so called for redemption shall forthwith after such date cease and terminate, except only the right of the holders to receive the redemption price without interest. At any time after giving notice of redemption as aforesaid, of all or any part of the Preferred shares, this corporation may deposit with a bank or trust company [fol. 93] in the City of Oakland, State of California, as a trust fund for the benefit of the holders of shares called for redemption, an amount in cash sufficient to pay the redemption price of such shares. After the making of such deposit, such shares shall not be deemed to be outstanding for any purpose, and the rights of the holders thereof shall be limited to the right to receive payment of the redemption price from such fund upon surrender of the certificates evidencing such shares. Subject to the provisions hereof, the Board of Directors shall have the authority to prescribe from time to time the manner in which preferred shares shall be redeemed.

(c) The holders of Preferred shares, at any date set for payment of dividends on such preferred shares, may convert the same into Common shares upon the basis of one (1) Common share for each Preferred share converted, upon surrender to the corporation of the certificates representing said Preferred shares, properly endorsed; and thereupon such holders shall be entitled upon such surrender to receive certificates representing one (1) Common share for each Preferred share so converted; provided, however, that in the event this corporation shall elect to redeem any of its outstanding Preferred shares, the time within which the holders of Preferred shares may convert the same into Common shares shall also be limited to the period prior to the date set for redemption, as hereinbefore provided in [fol. 94] (d) of this Article Seventh. Upon receipt of the surrendered certificates representing Preferred shares for conversion, this corporation shall issue, and the surrendering shareholder shall receive and accept, in lieu and conversion of such certificates, certificates for the number of Common shares to which he may be entitled by virtue of such conversion. Upon the surrender of any Preferred shares for conversion, the certificates for such Preferred shares

so surrendered shall be cancelled and the Preferred shares theretofore represented thereby shall never be reissued.

Of the authorized Common shares, an amount sufficient to provide for the conversion of the Preferred shares from time to time outstanding, as provided hereinabove, shall at all times be reserved for the purpose of effecting the conversion thereof. No issue of common shares or of preferred shares shall be made unless and until the amount of authorized unissued Common shares, after deducting therefrom the amount of Common shares proposed to be issued, shall at least equal the amount thereof required after such issue of Common shares or of Preferred shares to be reserved for the purpose of effecting the conversion of Preferred shares as hereinabove provided."

Two: That the number of shares of said corporation consenting to such amendment of its Articles of Incorporation is One Thousand, and the following is a copy of the form of Written Consent executed by the holders of said [fol. 95] shares:

"Written Consent of Shareholders to Amendment of Articles of Incorporation of Bigge Drayage Co., Ltd.

Whereas, at a special meeting of the Board of Directors of Bigge Drayage Co., Ltd., a California corporation, duly and regularly held at the principal office for the transaction of the business of said corporation, at Oakland, California, at 11:00 o'clock A.M., on the 29th day of April, 1940, pursuant to a written consent of all the Directors of said corporation, at which meeting a quorum of the members of said Board of Directors was at all times present and acting, amendments to said Articles of Incorporation of said corporation were adopted and approved by resolutions of said Board, amending Article First and Article Fourth, and by adding Article Seventh to said Articles of Incorporation of said corporation, to read as follows, respectively:

'First:—That the name of this corporation is Bigge Drayage Co.

'Fourth:—This corporation is authorized to issue two classes of shares of stock, to be designated, respectively, "preferred" and "Common"; the total number of shares which this corporation shall have authority to issue is One Hundred Thousand Five Hundred (100,500), and the aggre-

gate par value of all shares that are to have a par value [fol. 96] shall be Fifty Thousand Dollars ($50,000.00), and

(a) The number of Preferred shares that are to have a par value shall be Five Hundred (500), and the par value of each share of such class shall be One Hundred Dollars ($100.00); and

(b) The number of Common shares that are to be without par value shall be One Hundred Thousand (100,000).

Seventh:—A statement of the preferences, privileges and restrictions granted to or imposed upon the respective classes of shares and/or upon the holders thereof is as follows:

(a) The holders of Preferred shares shall be entitled to receive out of any funds of this corporation at the time legally available for the declaration of dividends, dividends at the rate of six per cent (6%) per annum of the par value thereof, payable in cash semi-annually, or at such time as the Board of Directors may from time to time determine, when and as declared by the Board of Directors. Such dividends shall accrue from the date of issuance of the respective Preferred shares and shall be deemed to accrue from day to day regardless of whether or not earned or declared. Such dividends shall be payable before any dividends shall be declared or paid upon or set apart for the Common shares, and shall be cumulative, so that if in any year or years dividends upon the outstanding Preferred shares at the rate of six per cent (6%) per annum [fol. 97] of the par value thereof shall not have been paid thereon or set apart therefor, the amount of the deficiency shall be fully paid or declared and set apart for payment, but without interest, before any distribution, whether by way of dividend or otherwise, shall be declared or paid upon or set apart for the Common shares.

(b) In the event of a voluntary liquidation, dissolution or winding up of this corporation, the holders of Preferred shares shall be entitled to receive out of the assets of this corporation, whether such assets are capital or surplus of any nature, an amount equal to One Hundred Per cent (100%) of the par value of such Preferred shares, and, in addition to such amount a further amount equal to the dividends unpaid and accumulated thereon, as provided in

(a) of this Article Seventh, to the date of such distribution, whether earned or declared or not, and no more, before any payment shall be made or any assets distributed to the holders of Common shares.

In the event of an involuntary liquidation, dissolution or winding up of this corporation, the holders of the Preferred shares shall be entitled to receive, out of the assets of this corporation, whether such assets are capital or surplus of any nature, an amount equal to One Hundred per cent (100%) of the par value of such Preferred shares and a further amount equal to the dividends unpaid and accumulated thereon as provided in (a) of this Article Seventh [fol. 98] to the date of such distribution, whether earned or declared or not, and no more, before any payment shall be made or any assets distributed to the holders of Common shares.

If upon such liquidation, dissolution or winding up, whether voluntary or involuntary, the assets thus distributed among the holders of the Preferred shares shall be insufficient to permit the payment to such shareholders of the full preferential amounts aforesaid, then the entire assets of this corporation to be distributed shall be distributed ratably among the holders of Preferred shares. A consolidation or merger of this corporation with or into any other corporation or corporations shall not be deemed to be a liquidation, dissolution or winding up, within the meaning of this clause.

(c) In the event of any liquidation, dissolution or winding up of this corporation, whether voluntary or involuntary, subject to all of the preferential rights of the holders of Preferred shares on distribution or otherwise, the holders of Common shares shall be entitled to receive, ratably, all remaining assets of this corporation.

(d) This corporation, at the option of the Board of Directors, may redeem the whole, or from time to time may redeem any part of the Preferred shares on any dividend date, by paying therefor in cash One Hundred Two and 50/100 Dollars ($102.50) per share and, in addition to the [fol. 99] aforementioned amount, an amount in cash equal to all dividends on the Preferred shares unpaid and accumulated, as provided in (a) of this Article Seventh, whether or not earned or declared, to and including the date fixed for redemption, such sum being hereinafter some-

times referred to as the redemption price. In case of the redemption of a part only of the outstanding preferred shares, this corporation shall designate by lot, in such manner as the Board of Directors may determine the shares to be redeemed, or shall effect such redemption pro rata. At least sixty (60) days' previous notice by mail, postage prepaid, shall be given to the holders of record of the Preferred shares to be redeemed, such notice to be addressed to each such shareholder at his postoffice address as shown by the records of this corporation. On or after the date fixed for redemptions and stated in such notice, each holder of Preferred shares called for redemption shall surrender his certificate evidencing such shares to this corporation at the place designated in such notice and shall thereupon be entitled to receive payment of the redemption price. In case less than all of the shares represented by any such surrendered certificate are redeemed, a new certificate shall be issued representing the unredeemed shares. If such notice of redemption shall have been duly given, and if on or before the date fixed for redemption funds necessary for the redemption shall have been set aside so as to be and [fol. 100] continue available therefor, then notwithstanding that the certificates evidencing any preferred shares so called for redemption shall not have been surrendered, the dividends with respect to the shares so called for redemption shall cease to accrue after the date fixed for redemption, and all rights with respect to the shares so called for redemption shall forthwith after such date cease and terminate, except only the right of the holders to receive the redemption price without interest. At any time after giving notice of redemption as aforesaid, of all or any part of the Preferred shares, this corporation may deposit with a bank or trust company in the City of Oakland, State of California, as a trust fund for the benefit of the holders of shares called for redemption, an amount in cash sufficient to pay the redemption price of such shares. After the making of such deposit, such shares shall not be deemed to be outstanding for any purpose, and the rights of the holders thereof shall be limited to the right to receive payment of the redemption price from such fund upon surrender of the certificates evidencing such shares. Subject to the provisions hereof, the Board of Directors shall have the authority to prescribe from time to time the manner in which preferred shares shall be redeemed.

(c) The holders of Preferred shares, at any date set for payment of dividends on such preferred shares, may [fol. 101], convert the same into Common shares upon the basis of one (1) Common share for each Preferred share converted, upon surrender to the corporation of the certificates representing said Preferred shares, properly endorsed; and thereupon such holders shall be entitled upon such surrender to receive certificates representing one (1) Common share for each Preferred share so converted; provided, however, that in the event this corporation shall elect to redeem any of its outstanding Preferred shares, the time within which the holders of Preferred shares may convert the same into Common shares shall also be limited to the period prior to the date set for redemption, as hereinbefore provided in (d) of this Article Seventh. Upon receipt of the surrendered certificates representing Preferred shares for conversion, this corporation shall issue, and the surrendering shareholder shall receive and accept, in lieu and conversion of such certificates, certificates for the number of Common shares to which he may be entitled by virtue of such conversion. Upon the surrender of any Preferred shares for conversion, the certificates for such Preferred shares so surrendered shall be cancelled and the Preferred shares theretofore represented thereby shall never be reissued.

Of the authorized Common shares, an amount sufficient to provide for the conversion of the Preferred shares from time to time outstanding, as provided hereinabove, shall at all times be reserved for the purpose of effecting the con- [fol. 102] version thereof. No issue of common shares or of preferred shares shall be made unless and until the amount of authorized unissued Common shares, after deducting therefrom the amount of Common shares proposed to be issued, shall at least equal the amount thereof required after such issue of Common shares or of Preferred shares to be reserved for the purpose of effecting the conversion of Preferred shares as hereinabove provided."

Now, therefore, each of the undersigned shareholders of said corporation does hereby adopt, approve and consent to the foregoing amendments to said Articles of Incorporation, and does hereby consent that said Articles of Incorporation be amended to read as herein set forth.

In witness whereof, each of the undersigned has hereunto

signed his name and, following his name, the date of signing and the number of votes which he is entitled to vote upon amendments of said Articles of Incorporation of the Character of the foregoing amendments.

Name	Date	Number of Votes

Three: That the total number of shares of said corporation entitled to vote on or consent to the adoption of such amendments is One Thousand (1,000);

In witness whereof, the undersigned have executed this Certificate of Amendment this 29th day of April, 1940.

[fol. 103] (signed) Henry W. Bigge, President of Bigge Drayage Co., Ltd.; (signed) Bernice M. Bigge, Secretary of Bigge Drayage Co., Ltd.

STATE OF CALIFORNIA,
County of Alameda, ss.

HENRY WILHELM BIGGE and BERNICE MABLE BIGGE, being first duly sworn each for himself/herself deposes and says; That Henry Wilhelm Bigge is, and was at all of the times mentioned in the foregoing Certificate of Amendment, the President of Bigge Drayage Co., Ltd., the California corporation therein referred to; and Bernice Mable Bigge is, and was at all of said times, the Secretary of said corporation; that each has read said Certificate and that the statements therein made are true of his/her own knowledge, and that the signatures purporting to be the signatures of said President and Secretary thereto are the genuine signatures of said President and Secretary, respectively.

Henry W. Bigge, Bernice M. Bigge.

Subscribed and sworn to before me this 29th day of April, 1940. A. S. Royster (signed), Notary Public in and for the County of Alameda, State of California. (Notarial Seal).

(P.63)

EXHIBIT NO. 5

Form FEA 419
Budget Bureau No. 41-R002.
Approval expires 6-30-44.

Foreign Economic Administration
FOREIGN ECONOMIC ADMINISTRATION—WAR PRODUCTION BOARD

FEA Block Control No.
(Not to be filled in by applicant)

APPLICATION FOR EXPORT LICENSE AND PRIORITY ASSISTANCE FOR ARTICLES AND MATERIALS (OTHER THAN ARMS, AMMUNITION, AND IMPLEMENTS OF WAR, TINPLATE SCRAP AND MERCURY)

License is hereby granted to the applicant named herein to export from the United States to the purchaser and consignee in the destination stated herein the articles and materials described, in the quantity given, for a consideration not in excess of that permissible by the Revised Maximum Export Price Regulation, as amended, issued by the Office of Price Administration. If the consideration is in excess of such maximum price, the issuance of this license shall not be construed as an approval of such price nor as relieving the applicant of liability for any violation of said Price Regulation. THIS LICENSE IS EXPRESSLY SUBJECT TO ALL RULES AND REGULATIONS ISSUED BY THE FOREIGN ECONOMIC ADMINISTRATION. Unless otherwise limited, it is valid for a period of ONE YEAR from the date of issuance. It is not transferable without official authority and is subject to revocation without notice.

IMPORTANT.—Applicant's signature required on DUPLICATE and QUADRUPLICATE (when used). See INSTRUCTIONS for filing in this form on the reverse side of ORIGINAL. If there is insufficient space for fully answering any question, supplemental explanation sheets should be attached to EACH copy of the application.

PB-1843 F

TO BE FILLED IN BY APPLICANT

1. Applicant (If applicant is agent, also give name of principal in 1 (b)):
(a) Name Henry J. Kaiser Company
Address Latham Square Bldg., Oakland Calif.
Citizenship

(b) Name
Address Same
Citizenship

2. Applicant's Ref. 11/11/44 Siderurgica

3. Country of Destination Colombia

4. Date of Application 11/13/44

5. Number of Import Recommendation, Selected Destination (Blanket) Control Permit, or Import License

6. Give name and address (street, city, state) of the following concerned with this shipment:

(a) Purchaser in foreign country:
Name Empresa Siderurgica, S.A.
Address Medellin, Colombia

Check, if for purchaser's own use ☐, or if for resale to (check one):
(b) ☐ Distributor/Wholesaler, ☐ Retailer, ☐ User.
Name
Address

(c) Consignee in foreign country (If same as purchaser, state "same")
Name Roldan & Cia
Address Buenaventura, Colombia

(d) Consignee in U. S. (If same as applicant or affiliate thereof, state "same")
Name Same
Address

7. (a) Item No.	(b) Quantity to be shipped (see instruction B4)	(c) (Do not fill in) Quantity approved (If different from 7 (b))	(d) Description of commodities in sufficient detail to permit accurate identification. Include applicant's purchase order description in full. Also show Schedule B No. and Processing Code	(e) CMP Code No. (If any)	(f) Total selling price and point of delivery, also unit value, if possible (see instruction B6) Unit value	Total price
			Articles and materials set forth on attached WPB 3649 which constitute the total known requirements for this cement manufacturing plant beginning January 1, 1945. The materials exported will be used only in accordance with the approval granted. All used second hand equipment			
			TOTAL PRICE			$555,000

VALIDATED
UNDER GENERAL PRIORITIES REGULATION

DEC 1 1944

By John H. Nelson

8. (a) Total weights (see instruction B6) Gross	Net	Cubic Meas.	(b) Date(s) on which it is necessary that Item(s) be ready for exportation: Item No.	Month	Day	Year	Item No.	Month	Day	Year	Item No.	Month	Day	Year
5647 tons	5347 tons	15,000 tons	1	During year		1945								

9. Describe in nontechnical terms item(s) on which priority assistance is requested. (Do not use trade name. Give approximate composition of alloys, if known.)

FOR OFFICIAL USE ONLY

FEA Case No. (License number when validated):

2086

DEC 14 1945

10. If a PREVIOUS application for this material has been submitted, give FEA CASE No. and WPB CASE No. (If any) and check reason for filing this application:

Previous FEA Case No.

Previous WPB Case No. (If any)

☐ Appeal for higher preference rating.
☐ Application returned for correction.
☐ Renewal of export license.
☐ Request for reconsideration of rating denial.
☐ Other reason (state reason).

NOT VALID WITHOUT OFFICIAL CERTIFICATION

Under authority of the War Production Board, delivery of the material referred to herein is assigned a preference rating of _____. Application and extension of rating shall be made in accordance with Priorities Regulation No. 3.

FOR OFFICIAL USE ONLY

1 ORIGINAL (License—when validated)

Identification Symbol

WPB Case No.

INSTRUCTIONS GOVERNING THE USE OF THE COMBINED APPLICATION FOR EXPORT LICENSE AND PRIORITY ASSISTANCE (FORM FEA 419)

A. GENERAL INSTRUCTIONS

1. Form FEA 419 is to be used when applying for a license to export commodities for which the Foreign Economic Administration has been given rating authority by the War Production Board,* or for which, in the past, a separate form WPB 541 (formerly PD-1A) was filed in addition to the form FEA 419. No form WPB 541 need be submitted with this application as the new form is a combination of form FEA 419 and form WPB 541. Additional copies of this form may be obtained from offices of the Foreign Economic Administration or field offices of the Department of Commerce. Applications on form FEA 419 should be submitted to the Foreign Economic Administration, Washington 25, D. C.

2. Applications may be made by a corporation, a partnership, an individual who is in fact the exporter, or a duly authorized agent. No application of any person not subject to the jurisdiction of the United States will be considered unless such applicant shows in detail that an unusual hardship would result from the refusal to consider such application. Any attempt to export commodities differing in any way from those licensed, or any alteration of a license, except by a duly authorized officer of the Government, is punishable under appropriate acts of Congress.

3. Licenses must be presented to the Collector of Customs at the port of exit or, in the case of shipments by mail, to the Postmaster at the point of mailing. In the case of shipments by water or air, the licenses must be presented prior to loading. In the case of shipments by means other than water, air, or mail, licenses must be presented to the Collector of Customs at the port of exit prior to inspection by the customs officials.

4. Applications on this form should be submitted in TRIPLICATE for those commodities for which the Foreign Economic Administration has been authorized to assign preference ratings, and in QUADRUPLICATE for those commodities which previously required the filing of form WPB 541. Applications should be typewritten, with the exception of the signature, but will be considered if written legibly in ink. The copy marked DUPLICATE (and the QUADRUPLICATE when used) must bear the signature of the applicant, or an officer or duly authorized agent of the applicant.

5. An application for an export license and priority assistance shall not be filed with the Foreign Economic Administration unless the applicant has a firm order from the purchaser named therein for the articles described in the amounts stated.

6. A license is valid for a period of 1 year from the date of issuance unless otherwise stated on the face of the license. If the license is revoked, or the period of validity expires, or shipment is for any reason not to be made, the license, if in the possession of the licensee, must be returned without delay to the Foreign Economic Administration.

7. The return post card which is furnished with each application must be filled in and submitted to the Foreign Economic Administration with the application. The application will be returned unless accompanied by the post card.

THIS SPACE TO BE FILLED IN BY APPLICANT

10. Send license to (type or print plainly):

NAME Henry J. Kaiser Company

STREET Care Ward, Kellogg & Simmons

CITY AND STATE 801 Tower Bldg., Washington, D.C.

B. SPECIAL INSTRUCTIONS

(Fill in answers to all applicable questions)

1. *Question 1.*—The applicant, if he is the agent of the exporter, must enter the name of his principal in part (b).

2. *Question 3.*—The country of ultimate destination is to be entered, not the country through which the exportation will travel in transit to a final destination.

3. *Question 6.*—The applicant shall enter in 6 (a), the name of the foreign customer who ordered the goods and to whom applicant is selling the goods. If the material ordered by the purchaser is for his own use, check the box provided. If the material will be resold by the purchaser, check in 6 (b) the applicable box, and give name and address of purchaser's customer. In 6 (c), there shall be entered the name of that person or firm at the port of entry who will receive the goods and through whom the goods will be transmitted to the purchaser. In answering 6 (d), there shall be entered the name of the person or firm who will clear the shipment through Customs, if other than the licensee or an affiliate of the licensee.

4. *Question 7 (a).*—When a group of related commodities is listed, it is necessary to give each commodity an item number under column (a) (for example, 1, 2, 3, etc.).

7 (b).—Give the quantity to be shipped using units specified in the *Comprehensive Export Schedule.*** When these units differ from those specified under CMP, show units in terms of CMP in parentheses (see *Products and Priorities***).

7 (c).—This column is not to be filled in by the applicant.

7 (d).—Description of the commodities must be given in sufficient detail to permit accurate identification. Give the full description of the material as shown in the applicant's purchase order to his supplier. Show the identifying Schedule B number to the right of each commodity described. Following the Schedule B number, insert the correct Processing Code in order to facilitate processing of the application (for example, 6046.00—SHIP).

7 (e).—The applicant should enter the CMP Code Number, if any. (Refer to *Products and Priorities.***) Applications may be returned if a CMP Code Number is not shown, if one has been designated for the commodity.

7 (f).—The applicant must show total price in the customary form of quotation, such as f. o. b. (factory); f. a. s. (named port), or other form used in the past. The particular form of price quotation must be specified. Unit value should be shown except where a large variety of products within a single Schedule B classification makes such a break-down extremely difficult. In such cases, only total price need be shown.

7 (g).—Total weights need be shown only for shipments to Selected Destinations, or for shipment made under the Program License of the Combined Agency for the Middle East Supply. The net weight must be shown in kilos for Selected Destinations only.

7 (h).—If the commodities listed under 7 (c) are to be exported in more than one shipment, enter applicable item numbers and dates on which it is necessary that commodities be ready for exportation.

5. *Question 14.*—The use intended for the material in this application will be an important factor in determining issuance of the license and the priority rating to be assigned. The applicant should indicate clearly in answering question 14, whether the material is to be used: (i) For resale in the open market or for conversion into goods to be so marketed, stating what will be produced or manufactured; (ii) for a service to be rendered, indicating how the item(s) described herein will be used in this service; (iii) for new construction or expansion; (iv) for maintenance, repair, or expansion of existing facilities; (v) for the national defense, public health, or safety of the country of destination; (vi) to enable the purchaser to produce and export needed materials to the United States or to one of the United Nations (vii) to be reexported and, if so, to what country, etc.

These instructions are subject to change. Changes will be announced in the *Comprehensive Export Schedule* and *Current Export Bulletins* issued by the Foreign Economic Administration, and in War Production Board releases.

For further information consult the *Comprehensive Export Schedule*, or the New York office of the Foreign Economic Administration, field offices of the Department of Commerce, or the Foreign Economic Administration or the War Production Board, Washington 25, D. C. Field offices of the War Production Board may also be consulted regarding questions on the form which also appear on Form WPB 541.

*Materials for which the Foreign Economic Administration has rating authority are listed in the *Comprehensive Export Schedule* and are announced from time to time in *Current Export Bulletins*.

***Products and Priorities* is a publication of the War Production Board containing information regarding CMP products. The *Comprehensive Export Schedule* is issued by the Foreign Economic Administration for the guidance of all concerned with Export Regulations and interpretations. Both publications may be obtained from the Superintendent of Documents, Government Printing Office, Washington 25, D. C., at a cost of 20 cents each.

FOR COLLECTORS OF CUSTOMS AND POSTMASTERS

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Quantity	Description	Value	Name of Vessel if Export is Made by Water	Port of Exit or Post Office of Mailing	Date	Customs Officer or Postmaster Signs and Affix Stamp, If Any

(P.65) Sheet 8 of 10

Form WPB-3540
10-1-43

UNITED STATES OF AMERICA
WAR PRODUCTION BOARD

R

APPLICATION FOR AUTHORITY TO ACQUIRE MATERIALS FOR FOREIGN PROJECTS

PROJECT NUMBER NO. 43-R5108
APPROVAL EXPIRES FEBRUARY 8, 1944

SERIAL NO.

To: Foreign Economic Administration, Washington 25, D.C.

DATE PROJECT AUTHORIZATION ISSUED

EXPIRATION DATE OF AUTHORIZATION

INSTRUCTIONS - Fill in Seven (7) copies of form and attachments. Retain one copy and send original and five copies to the above address.

PRIMARY DIVISION OR AGENCY

1. TAX AMORTIZATION REQUESTS FOR TAX AMORTIZATION PRIVILEGES WILL NOT BE CONSIDERED UNLESS FILED WITH THIS APPLICATION.
2. CHECK WHETHER THIS IS AN ORIGINAL APPLICATION FOR PRIORITIES ASSISTANCE OR AN AMENDMENT TO A PREVIOUS AUTHORIZATION. ORIGINAL AMENDED. IF AMENDMENT, GIVE: SERIAL NO._____ DATE OF ISSUANCE_____.

SPACE ABOVE FOR WPB USE ONLY

NAME OF COMPANY: Henry J. Kaiser Company

ADDRESS (Street, City, Zone, State): 1:10 16th Street, N. W. Washington, D. C.

LOCATION OF PROJECT: Boellin, Colombia, S. A.

SECTION II - BILL OF MATERIALS (See page 2 for Section I)

LINE NO. (a)	DESCRIPTION OF MATERIALS (List separately materials to be incorporated into project and those not to be incorporated) (b)	CMP CODE NO. (See Reverse of page 2) (c)	DEPARTMENT OF COMMERCE SCHEDULE "B" (d)	UNIT OF MEASURE (e)
	LIST I - MATERIALS TO BE INCORPORATED IN CONSTRUCTION			
23	Wire ropes	7bf	7:3900	Dollars
24	Rock drill bits and sharpener		7:3903	Dollars
25	Forge		7:3900	Dollars
26	Electric magnet - 115 volt		7:3900	Dollars
27	Concrete Mixers Locomotive portable, with motor, lever and measuring tank		7:1500	Dollars
28	Link belt navel complete with boom, buckets and 100 HP motor	71f	720100	Dollars
29	Bucyrus Erie Navel complete with boom, buckets, generator, control, etc.	71f	720100	Dollars
30	Plymouth 12-ton gasoline motored locomotive	750	714000	Dollars
31	Gasoline Engines	176	714400	Dollars
32	Boilers, stationary - 100 HP	158	714500	Dollars
33	D-7 Caterpillar tractor with angle dozer	71f	714500	Dollars
34	Part for heavy machinery		7:3900	Dollars
35	Horizontal feature ore reactor with filters, thickener, air tank, belting, etc.	178	770500	Dollars
36	Horizontal twin with flywheel, pulley and belt drive	178	770500	Dollars
37	Air Receivers	178	770500	Dollars
38	Tanks Gl wood & reinforced		4:3900	Dollars
39	Tanks, steel, 1-7½, 1-8½, 1-10½, 1-[illegible] gal. water tank, 1-6½		704300	Pounds
40	Motors, electric, 3 Ph. - 60 cyc. - 440 volts - 2-1/4 HP	401	704000	Number
41	Motors, electric, 3 Ph. - 60 cyc. - 440 volts - 1-1/2 HP	401	704000	Number
42	Motors, electric, 3 Ph. - 60 cycl-440 volts, 2-1HPs 2-2 HPs 4-3 HPs 5-5HPs 2-7-1/2 HPs 1-10 HPs 6-15 HPs 4-20 HPs 1-25 HPs 2-30 HPs 2-40 HPs 1-6 HPs 1-125 HPs 1-75	401	704:00	Number
43	Motor, electric, 3 Ph. - 60 cyc. - 440 volt. 1-:50 HP	401	704:00	Number
44	5-1/2 Kl. generator	401	70P715	Number
45	30 Kl Amps set with panels, switchgear, etc.	401	70:715	Number
46	1/2 Kl Generator with motor, switchboards etc	401	70:715	Number
47	Main distributing switchboards & panels meters, transformers, circuit breakers, bus bar connections, switches, line rack, conduits	410	70:150	Number
48	Control panel for motor fuses, switch boxes etc.	410	70:150	Number
	(PAGE WPB 668 6-17)			

VALIDATED
UNDER WPB REG. 3 AUTHORIZATION
DEC 1 '44
By John Nicholson

(IF ADDITIONAL SPACE IS REQUIRED USE ADDITIONAL SHEETS WITH SAME ARRANGEMENT)

SEE NEXT SHEET FOR REMAINING COLUMNS

CERTIFICATION ON REVERSE OF THIS PAGE MUST BE EXECUTED BY THE APPLICANT OR HIS AGENT BEFORE FORM IS FILED.

All used Hand Compressor

104d

PAGE 2

SECTION I

ESTIMATED COST (DO NOT INCLUDE COST OF EXISTING FACILITIES)

COST	FEDERAL FUNDS (U.S.) (a)	OTHER FUNDS (b)	TOTAL (c)
TOTAL COST			
COST EXCLUDING LAND			

PROPOSED CONSTRUCTION SCHEDULE

NUMBER OF DAYS BETWEEN DPD AUTHORIZATION AND:		NUMBER OF DAYS REQUIRED FOR:	
START OF CONSTRUCTION (a)	INITIAL EQUIPMENT INSTALLATION (b)	ACTUAL CONSTRUCTION (c)	EQUIPMENT INSTALLATION (d)

SECTION II - BILL OF MATERIALS

REPEAT LINE NO. (f)	TOTAL ANTICIPATED REQUIREMENTS FOR PROJECT (g)	MATERIAL REQUESTED BY THIS APPLICATION: NUMBER OF UNITS (h)	WEIGHT (i)	VALUE (U.S. Dollars) (j)	REQUIRED DELIVERY DATE (k)	ADJUSTED QUANTITIES (FOR DPD USE ONLY): NUMBER OF UNITS (l)	WEIGHT (m)	VALUE (U.S. Dollars) (n)
			Long Ton					
1		7	70	8871.00				
2		4	20	4268.00				
		1	1008	17:34.00				
4		8	15	1 :6.00				
		1	15	1491.00				
6		4	40)	2850.0				
7		8	1[illegible]	89 7.00				
8		[illegible]	20	13937.00				
9		10	[illegible]	[illegible]:0				
10		4	6	2[illegible]6.00				
11		1	[illegible]	1868.0	[illegible] 1 54			
14		14	1[illegible]	1[illegible] by				
17		[illegible]	0	16:01.00	Jotun [illegible]			
24		[illegible]	[illegible]50	20:39.00				
26		[illegible]	[illegible]0[illegible]	[illegible]:67.00				
28		2	20	[illegible]:29.00				
17		1	1[illegible]	167[illegible].00				
18		[illegible]	[illegible]0[illegible]	[illegible]780.50				
19		[illegible]	[illegible]0	[illegible]2.6.21				
20		19	[illegible]8	10847.50				
[illegible]		1	[illegible]0	[illegible]43.00				
[illegible]		1	150	[illegible]172.00				

VALIDATED

IF ADDITIONAL SPACE IS REQUIRED USE EXTRA SHEETS WITH SAME HEADINGS

CERTIFICATION ON REVERSE OF PAGE 1 MUST BE EXECUTED BY THE APPLICANT OR HIS AGENT BEFORE THE FORM IS FILED

104c

(P.67) Sheet 1 of 10

FORM WPB-3648 (10-7-43) R

UNITED STATES OF AMERICA
WAR PRODUCTION BOARD

BUDGET BUREAU NO. 12-R310.1
APPROVAL EXPIRES FEBRUARY 8, 1945

APPLICATION FOR AUTHORITY TO ACQUIRE MATERIALS FOR FOREIGN PROJECTS

SERIAL NO.

TO: Foreign Economic Administration, Washington 25, D.C.

DATE PROJECT AUTHORIZATION ISSUED | EXPIRATION DATE OF AUTHORIZATION

INSTRUCTIONS - Fill in seven (7) copies of form and attachments. Retain one copy and send original and five copies to the above address.

1. TAX AMORTIZATION REQUESTS FOR TAX AMORTIZATION PRIVILEGES WILL NOT BE CONSIDERED UNLESS FILED WITH THIS APPLICATION.
2. CHECK WHETHER THIS IS AN ORIGINAL APPLICATION FOR PRIORITIES ASSISTANCE OR AN AMENDMENT TO A PREVIOUS AUTHORIZATION. ORIGINAL AMENDED. IF AMENDMENT, GIVE: SERIAL NO._____ DATE OF ISSUANCE._____

PRIMARY DIVISION OR AGENCY

SPACE ABOVE FOR WPB USE ONLY

NAME OF COMPANY	ADDRESS (Street, City, Zone, State)	LOCATION OF PROJECT
Henry J. Kaiser Company	1210 18th Street, N. W. Washington, D. C.	Medellin, Colombia, S.A.

SECTION II - BILL OF MATERIALS (See page 3 for Section I)

LINE NO. (a)	DESCRIPTION OF MATERIALS (List separately materials to be incorporated into project and those not to be incorporated) (b)	CMP CODE NO. (See Reverse of page 3) (c)	DEPARTMENT OF COMMERCE NUMBER SCHEDULE "B" (d)	UNIT OF MEASURE (e)
	LIST I - MATERIALS TO BE INCORPORATED IN CONSTRUCTION			
1	Belt Conveyors complete with drives & motors, controls, panels,	145	724900	Dollars
	etc. Total HP 40			
2	Bucket Elevators complete with motors. Total HP 40	145	724900	Dollars
3	Inclined Hoist complete with gears, brakes, rope, cars, 250 HP	145	724900	Dollars
	motor			
4	Screw Conveyors, complete with case, drive, and motors. Tot.HP 40	145	724900	Dollars
5	Fuller Kenyon complete with pump, gages, connection and motor	145	729100	Dollars
	Total HP 75			
6	A.C. Compeb Mills, complete with 500 HP motors. Total HP2000	144	732105	Dollars
7	Screens, various types, complete	144	732105	Dollars
8	Crushers complete with drives and motors. Total HP 55	144	732198	Dollars
9	Centrifugal pumps, oil pump, slurry pumps, etc. complete with	141	736998	Dollars
	motors.			
10	Stiff leg derrick complete with mast, boom, bullring, sheaves	146	731500	Dollars
	rope, blocks, etc.			
11	5 Drum hoist complete with motors. Total HP 60	146	731500	Dollars
12	Hoists, other, complete	146	731500	Dollars
13	Overhead cranes complete with tracks and motors. Total HP 195	146	731500	Dollars
14	Kilns, A.C. 10'x240' complete with rings, blocks, rollers, hoods,	144	733900	Dollars
	shafting, gearing, etc. and 500 HP motors, panels, switch gear,			
	etc. Total HP 1000 - 3 phase, 60 cycle, 440 volt.			
15	Kilns, oil fired treaters - 8'x100' complete with shafting, drive	144	733900	Dollars
	vent stacks, and 440 HP motors, panels, switch gears, etc.			
	Total HP 880 - 3 phase, 60 cycle, 440 volt.			
16	Burners for kilns, with piping, controls, etc.	588	733900	Dollars
17	Analyzers complete with instruments for kil	144	733900	Dollars
18	Kilns - complete	144	733900	Dollars
19	Dust Collectors complete	150	733900	Dollars
20	Feed tanks, Slurry tanks, and hoppers, etc.	588	733900	Dollars
21	Skimulter complete with motor, 60 HP - 3 phase, 60 cyc., 440 v.	144	733900	Dollars
22	Wash Mills complete with shafting, pillow blocks, discharge gates	144	733900	Dollars
	and drives			

VALIDATED
DEC 1 544
By

(FOR WPB USE ONLY)

(IF ADDITIONAL SPACE IS REQUIRED BOLD ADDITIONAL SHEETS WITH SAME HEADINGS)

SEE NEXT SHEET FOR REMAINING COLUMNS

CERTIFICATION ON REVERSE OF THIS PAGE MUST BE EXECUTED BY THE APPLICANT OR HIS AGENT BEFORE FORM IS FILED.

WPB - War Board 12-R310 p 2

104b

(P.68)

Sheet 1 of 10

SECTION I

ESTIMATED COST (DO NOT INCLUDE COST OF MISSING FACILITIES)

COST	FEDERAL FUNDS (U.S.) (a)	OTHER FUNDS (b)	TOTAL (c)
TOTAL COST			
COST EXCLUDING LAND			

PROPOSED CONSTRUCTION SCHEDULE

NUMBER OF DAYS BETWEEN DATE AUTHORIZATION NEED:		NUMBER OF DAYS REQUIRED FOR:	
START OF CONSTRUCTION (a)	INITIAL EQUIPMENT INSTALLATION (b)	ACTUAL CONSTRUCTION (c)	EQUIPMENT INSTALLATION (d)

SECTION II - BILL OF MATERIALS

CO-POST LINE NO. (a)	TOTAL ARTICLE-POUND EQUIVALENTS FOR PROJECT (b)	MATERIAL REQUESTED BY THIS APPLICATION: NUMBER OF UNITS (c)	WEIGHT (d)	VALUE (U.S. Dollars) (e)	REQUIRED DELIVERY DATE (f)	ADJUSTED QUANTITIES (FOR USE OF WSB ONLY): NUMBER OF UNITS (g)	WEIGHT (h)	VALUE (U.S. Dollars) (i)
23		10	20	72.00				
24		1	5	165.00				
25		1	2	25.00				
26		1	1	6.00				
27		1	2	858.10				
28		1	100	16585.00				
29		1	100	19059.29				
30		2	25	7655.00				
31		3	5	1555.50				
32		1	2	19.50				
33		1	5	909.00				
34		5207	50	28082.45				
35		VALIDATED		11700.50				
36		DEC 1 5 44	4	308.00				
37				500.00				
38		John H. Wilson	5	32.50				
39		5	40	1948.00				
40		2		6.18				
41		1		20.00				
42		42	60	1078.00				
43		1		1264.00				
44		1		25.00				
45		1		1558.00				
46		1	15	510.00				
47		1	5	858.00				
48		1	20	125.00				

IF ADDITIONAL SPACE IS REQUIRED USE SEPARATE SHEETS WITH SAME HEADING

CERTIFICATION ON REVERSE OF PAGE 1 MUST BE EXECUTED BY THE APPLICANT OR HIS AGENT BEFORE THE FORM IS FILED

[illegible]

1040

(P. 61)

Form WPB-3840
10-7-44

UNITED STATES OF AMERICA
WAR PRODUCTION BOARD

BUDGET BUREAU NO. 33-R016
APPROVAL EXPIRES FEBRUARY 1, 1945

R

APPLICATION FOR AUTHORITY TO ACQUIRE MATERIALS FOR FOREIGN PROJECTS

SERIAL NO.

TO: Foreign Economic Administration, Washington 25, D. C.

INSTRUCTIONS - Fill in seven (7) copies of form and attachments. Retain one copy and send original and five copies to the above address.

DATE PROJECT AUTHORIZATION ISSUED | EXPIRATION DATE OF AUTHORIZATION

1. TAX AMORTIZATION REQUESTS FOR TAX AMORTIZATION PRIVILEGES WILL NOT BE CONSIDERED UNLESS FILED WITH THIS APPLICATION.
2. CHECK WHETHER THIS IS AN ORIGINAL APPLICATION FOR PRIORITIES ASSISTANCE OR AN AMENDMENT TO A PREVIOUS AUTHORIZATION. ORIGINAL AMENDED. IF AMENDMENT, GIVE: SERIAL NO._____ DATE OF ISSUANCE_____

PRIMARY DIVISION OR AGENCY

SPACE ABOVE FOR WPB USE ONLY

NAME OF COMPANY

Henry J. Kaiser Company

ADDRESS (Street, City, Zone, State)

1210 18th Street, N.W.
Washington, D. C.

LOCATION OF PROJECT

Medellin
Colombia, South America

SECTION II - BILL OF MATERIALS (See page 2 for Section I)

LINE NO. (a)	DESCRIPTION OF MATERIALS (List separately materials to be incorporated into project and those not to be incorporated) (b)	CMP CODE NO. (See Reverse of page 2) (c)	DEPARTMENT OF COMMERCE NUMBER SCHEDULE "B" (d)	UNIT OF MEASURE (e)
	LIST 1 - MATERIALS TO BE INCORPORATED IN CONSTRUCTION			
49	Control panel for elevators, pumps, etc., complete	430	705198	Number
50	Steel safety cabinet control panels, complete	430	705198	Number
51	Accessories and parts for Motors, B.B.&		705598	Dollars
52	Switches, etc.		705800	Dollars
53	Other wiring supplies		705800	Dollars
54	Welding equipment and supplies	367	741585	Dollars
55	Transformers, 7-1/2 KVA, 1-25 KVA, 1-15 KVA, 1-3 1/2 KVA complete	465	705800	Number
56	Fixtures, Incandescent	436	709698	Dollars
57	Fixtures, Fluorescent	435	709681	Dollars
58	Engine lathes, 1-36" x 16', 1-16" x 8'	350	741005	Dollars
59	Drill with Accessories	350	741000	Dollars
60	Tool Box	350	741300	Dollars
61	Pipe threaders, Pipe Cutters, Grinders, etc.	350	741540	Dollars
62	Dowels and Accessories for machine tools		741990	Dollars
63	Hand Tools, miscellaneous	345	627090	Dollars
64	Roller Bearings and parts	305	749800	Dollars
65	Bolts, nuts, screws, rivets	314	697000	Lbs.
66	Structural Steps	312	699300	Lbs.
67	Pipe	312	699000	Lbs.
68	Pipe	312	699199	Lbs.
69	Galvanized Sheets	312	699300	Lbs.
70	Galvanizing Steel	312	699300	Lbs.
71	Buildings	312	699300	Lbs.
72	Piles	312	699300	Lbs.
73	Steel Joists		699300	Lbs.
74	Steel		699300	Lbs.
75	Steel		699300	Lbs.
76	Buildings		699300	Lbs.
77	Concrete		699300	Lbs.
78	Structural		699300	Lbs.
79	Steel		699300	Lbs.
	(FOR WPB USE ONLY)			

VALIDATED
DEC 1 1944
by John H Nelson

(IF ADDITIONAL SPACE IS REQUIRED ROLL ADDITIONAL SHEETS WITH SAME HEADINGS)

SEE NEXT SHEET FOR REMAINING COLUMNS

CERTIFICATION ON REVERSE OF THIS PAGE MUST BE EXECUTED BY THE APPLICANT OR HIS AGENT BEFORE FORM IS FILED.

All used hand compressors

(P. 70)

PAGE 2

SECTION I

ESTIMATED COST (DO NOT INCLUDE COST OF EXISTING FACILITIES)

COST	FEDERAL FUNDS (U.S.) (a)	OTHER FUNDS (b)	TOTAL (c)
TOTAL COST			
COST EXCLUDING LAND			

PROPOSED CONSTRUCTION SCHEDULE

NUMBER OF DAYS BETWEEN RFD AUTHORIZATION AND:		NUMBER OF DAYS REQUIRED FOR:	
START OF CONSTRUCTION (a)	INITIAL EQUIPMENT INSTALLATION (b)	ACTUAL CONSTRUCTION (c)	EQUIPMENT INSTALLATION (d)

SECTION II - BILL OF MATERIALS

REPEAT LINE NO. (f)	TOTAL ANTICIPATED REQUIREMENTS FOR PROJECT (g)	MATERIAL REQUESTED BY THIS APPLICATION: NUMBER OF UNITS (h)	WEIGHT (i)	VALUE (U.S. Dollars) (j)	REQUIRED DELIVERY DATE (k)	ADJUSTED QUANTITIES (FOR USE OF RFD): NUMBER OF UNITS (l)	WEIGHT (m)	VALUE (U.S. Dollars) (n)
49		1		121.50				
50		9		196.95				
51		2011	4	4080.51				
52		57	1	[illegible]				
53		8674	5	4080.66				
54	7	1804	3	1351.65				1
55		11	85	4482.50				
56		954		393.81				
57		17	1	41.70				
58		2	10	1334.50				
59		2	2	1949.00				
60		2	1	836.00				
61		10	3	2106.00				
62		8558	4	[illegible]				
63		111034	70	5135.97				
64		265	1	371.00				
65		31457	14	1264.93				
66		300	399	1537.56				
67		25587	6	336.07				
68		157730	75	250.98				
69		25695	39	[illegible]				
70		1674	2	46.99				
71		359		11.96				
72		1.00		36.77				
73		2000	1	250.40				
74		18		2.50				
75		3000	3.5	350.44				
76		27		9.34				
77		600	3.5	350.34				
78		2654		398.41				
79		20		3.40				

VALIDATED

Oct 1 54

IF ADDITIONAL SPACE IS REQUIRED USE EXTRA SHEETS WITH SAME HEADINGS

CERTIFICATION ON REVERSE OF PAGE 1 MUST BE EXECUTED BY THE APPLICANT OR HIS AGENT BEFORE THE FORM IS FILED

All used, except hand compressor

104g

71 Sheet 7 of 20

FORM WPB-3849
(8-7-44)

UNITED STATES OF AMERICA
WAR PRODUCTION BOARD

BUDGET BUREAU NO. 49-R3161
APPROVAL EXPIRES FEBRUARY 8, 1945

R

APPLICATION FOR AUTHORITY TO ACQUIRE MATERIALS FOR FOREIGN PROJECTS

SERIAL NO.

TO: Foreign Economic Administration, Washington 25, D.C.

DATE PROJECT AUTHORIZATION ISSUED

EXPIRATION DATE OF AUTHORIZATION

INSTRUCTIONS - Fill in *seven (7) copies* of form and attachments. Retain one copy and send *original* and *five copies* to the above address.

1. TAX AMORTIZATION REQUESTS FOR TAX AMORTIZATION PRIVILEGES WILL NOT BE CONSIDERED UNLESS FILED WITH THIS APPLICATION.
2. CHECK WHETHER THIS IS AN ORIGINAL APPLICATION FOR PRIORITIES ASSISTANCE OR AN AMENDMENT TO A PREVIOUS AUTHORIZATION. ORIGINAL AMENDED. IF AMENDMENT, GIVE: SERIAL NO. _____ DATE OF ISSUANCE _____

PRIMARY DIVISION OR AGENCY

SPACE ABOVE FOR WPB USE ONLY

NAME OF COMPANY

[illegible] Palmer [illegible] Corp

ADDRESS (Street, City, Zone, State)

[illegible] 10 [illegible] 17th Street, [illegible]
[illegible] Washington, [illegible] D.C.

LOCATION OF PROJECT

[illegible]
[illegible] Colombia, South America

SECTION II - BILL OF MATERIALS (See page 2 for Section I)

LINE NO. (a)	DESCRIPTION OF MATERIALS (List separately materials to be incorporated into project and those not to be incorporated) (b)	CMP CODE NO. (See Reverse of page 2) (c)	DEPARTMENT OF COMMERCE NUMBER SCHEDULE "B" (d)	UNIT OF MEASURE (e)
	LIST 1 - MATERIALS TO BE INCORPORATED IN CONSTRUCTION			
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]		[illegible]	[illegible]
[illegible]	[illegible]		[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]		[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]		[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]		[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]		[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

PAGE 2

SECTION I

ESTIMATED COST (DO NOT INCLUDE COST OF ASSISTIVE FACILITIES)

COST	FEDERAL FUNDS (U.S.) (a)	OTHER FUNDS (b)	TOTAL (c)
TOTAL COST			
COST EXCLUDING LAND			

PROPOSED CONSTRUCTION SCHEDULE

NUMBER OF DAYS BEFORE UPO AUTHORIZATION AND:		NUMBER OF DAYS REQUIRED FOR:	
START OF CONSTRUCTION (a)	INITIAL EQUIPMENT INSTALLA[redacted] (b)	ACTUAL CONSTRUCTION (c)	EQUIPMENT INSTALLATION (d)

[redacted] II - BILL OF MATERIALS

REPEAT LINE NO. (f)	TOTAL ANTICIPATED REQUIREMENTS FOR PROJECT (g)	MATERIAL REQUESTED BY THIS APPLICATION: NUMBER OF UNITS (h)	WEIGHT (i)	VALUE (U.S. Dollars) (j)	REQUIRED DELIVERY DATE (k)	ADJUSTED QUANTITIES (FOR UPO USE ONLY): NUMBER OF UNITS (l)	WEIGHT (m)	VALUE (U.S. Dollars) (n)
80		105		5.22				
81		49	1.2	58.53				
82		56		213.93				
83		7		57.56				
84		500		102.52				
85		5		9.34				
86		10		24.85				
87		17786	8	3284.80				
88		75	75	5206.67				
89		1946.58	15	1946.58				
90		14000	4	649.38				
91		439.99	5	439.99				
92		5514.16	2	5514.16				
93		7.3/2		7.38				
94		1		1.14				
95		21		1.68				
96		1		.10				
97		750		283.35				
98		5		14.95				
99		20		1.68				
100		89		[illegible]				
101		5		75.85				
102		173	1	17.38				
103		210		24.36				
104		12		30.43				
105		2		3.08				
106		6		9.57				
107		5		.45				
108		75		.85				
109		2	5	5.10				
110		1		.15				

IF ADDITIONAL SPACE IS REQUIRED USE EXTRA SHEETS WITH SAME HEADINGS.

CERTIFICATION ON REVERSE OF PAGE 1 MUST BE EXECUTED BY THE APPLICANT OR HIS AGENT BEFORE THIS FORM IS FILED

VALIDATED

104i

Form WPB-3649
10-7-941

UNITED STATES OF AMERICA
WAR PRODUCTION BOARD

BUDGET BUREAU NO. 13-R010
APPROVAL EXPIRES FEBRUARY 8, 1943

R

APPLICATION FOR AUTHORITY TO ACQUIRE MATERIALS FOR FOREIGN PROJECTS

SERIAL NO.

TO: Foreign Economic Administration, Washington 25, D.C.

DATE PROJECT AUTHORIZATION ISSUED | EXPIRATION DATE OF AUTHORIZATION

INSTRUCTIONS - File in seven (7) copies of form and attachments. Retain one copy and send original and five copies to the above address.

PRIMARY DIVISION OR AGENCY

1. TAX AMORTIZATION REQUESTS FOR TAX AMORTIZATION PRIVILEGES WILL NOT BE CONSIDERED UNLESS FILED WITH THIS APPLICATION.
2. CHECK WHETHER THIS IS AN ORIGINAL APPLICATION FOR PRIORITIES ASSISTANCE OR AN AMENDMENT TO A PREVIOUS AUTHORIZATION. ORIGINAL AMENDED. IF AMENDMENT, GIVE: SERIAL NO. DATE OF ISSUANCE.

SPACE ABOVE FOR WPB USE ONLY

NAME OF COMPANY

Henry J. Kaiser Company

ADDRESS (Street, City, Zone, State)

1710 18th Street, N.W.
Washington, D. C.

LOCATION OF PROJECT

Natal, Brazil
Natalia, South America

SECTION II - BILL OF MATERIALS (See page 3 for Section I)

LINE NO. (a)	DESCRIPTION OF MATERIALS (List separately materials to be incorporated into project and those not to be incorporated) (b)	CMP CODE NO. (See Reverse of page 3) (c)	DEPARTMENT OF COMMERCE NUMBER SCHEDULE "B" (d)	UNIT OF MEASURE (e)
	LIST I - MATERIALS TO BE INCORPORATED IN CONSTRUCTION			
111	Valves	881	774090	No.
112	Valves - [illegible]	881	846403	No.
113	Labor-Copy Equipment	806	719090	No.
114	Lumber		614000	M. f. b.
115	Railroad Ties		607900	M. f. b.
116	Poles Pail		606300	M. Tons
117	Pail Joints		606600	Do.
118	Brick Bolts	714	606800	Do.
119	Refractory Brick	928	536800	No.
120	Refractory Cement		537090	Do.
121	Packing		369990	Lbs.
122	Gather Belting		069900	Do.
123	Rubber Belting		214000	Lbs.
124	Furniture		27300	Do.
125	Magnesium Chloride		099090	Do.
126	Calcium Chloride		054300	Lbs.
127	Oil Tubes	886	660035	Lbs.
128	Linoleum & Gloves		097200	Pr.
129	Chairs		930970	No.
130	Friction Tape		209600	Do.
131	Emery Cloth		841800	Pc.
132	Miscellaneous Operating Supplies			

VALIDATED
Pursuant to M. Administration
WPC 1544
By John H. Nelson

(FOR WPB USE ONLY)

(IF ADDITIONAL SPACE IS REQUIRED USE ADDITIONAL SHEETS WITH SAME HEADINGS)

SEE NEXT SHEET FOR REMAINING COLUMNS

CERTIFICATION ON REVERSE OF THIS PAGE MUST BE EXECUTED BY THE APPLICANT OR HIS AGENT BEFORE FORM IS FILED.

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PAGE 2

SECTION I

ESTIMATED COST (DO NOT INCLUDE COST OF EXISTING FACILITIES)

COST	FEDERAL FUNDS (U.S.) (a)	OTHER FUNDS (b)	TOTAL (c)
TOTAL COST			
COST EXCLUDING LAND			

PROPOSED CONSTRUCTION SCHEDULE

NUMBER OF DAYS BETWEEN NPS AUTHORIZATION AND:		NUMBER OF DAYS REQUIRED FOR:	
START OF CONSTRUCTION (g)	INITIAL EQUIPMENT INSTALLATION (h)	ACTUAL CONSTRUCTION (i)	EQUIPMENT INSTALLATION (j)

SECTION II - BILL OF MATERIALS

REPEAT LINE NO. (f)	TOTAL ANTICIPATED REQUIREMENTS FOR PROJECT (g)	MATERIAL REQUESTED BY THIS APPLICATION: NUMBER OF UNITS (h)	WEIGHT (i)	VALUE (U.S. Dollars) (j)	REQUIRED DELIVERY DATE (k)	ADJUSTED QUANTITIES (FOR NPS USE ONLY): NUMBER OF UNITS (l)	WEIGHT (m)	VALUE (U.S. Dollars) (n)
111		408	5	$201.00				
112		424	1	$24.27				
113		510	1	$300.00				
114		326.328)		$547.47				
115		72.100)	300	$84.39				
116		[illegible]	255	$107.85				
117		[illegible]	15.3	$26.65				
118		16480	25.2	1218.28				
119		[illegible]	111.6	7488.88				
120		480	.8	15.85				
121		455	.8	117.80				
122		160		268.70				
123		1080		646.16				
124			5	300.00				
125		500		0.00				
126		200		4.27				
127		16000	8.25	420.00				
128	VALIDATED			9.54				
129				17.65				
130	DEC 1 544	16		11.05				
131	37 John H Wilson			8.58				
132			40 37.5	1701.00				
		TOTALS	5847	555,000.00				

IF ADDITIONAL SPACE IS REQUIRED USE EXTRA SHEETS WITH SAME HEADINGS

CERTIFICATION ON REVERSE OF PAGE 1 MUST BE EXECUTED BY THE APPLICANT OR HIS AGENT BEFORE THE FORM IS FILED

(NPS) WEP/MAINTENANCE P. 1 (10-67)

We need second blank application

104k

FORM WPB-3649 10-1-001

INSTRUCTIONS FOR FORM WPB-3649

These instructions cover the use of Form WPB-3649 as an application for priorities assistance involving construction and materials of all foreign projects except foreign petroleum projects which use Form WPB-3649.1. Form WPB-3649.1 is an adaptation of this form.

I. General Instructions

A. *Filing Instructions.* Fill in this form in 7 copies. Retain one copy and send the original and 5 copies together with supporting attachments in the same number of copies to the Foreign Economic Administration, Washington 25, D. C.

The applicant must be the person (operator) who is, or is to be the owner of the proposed structure or equipment, or his authorized representative. One of them must sign and date all copies of the application. The name and address of the applicant must be identical with that appearing on the application for export license.

B. *Procedure if Preference Rating or a Controlled Materials Allotment Authorization is Granted.* If the application is approved, preference ratings will be assigned where required and any controlled materials required will be allotted. One copy of this application will be returned to the applicant, containing therein or in an accompanying form or letter, the ratings and quantities or values of materials authorized.

C. *Special Items.* Many items to be used or bought are subject to WPB "S", "L", "M", "P", or "U" orders which require special forms. These special forms should be submitted with the application.

D. *Procedures to Follow to Obtain Amendment to Approved Authorizations.*

Submit a letter (in duplicate) for the following: (Give serial number and date of issuance if approved authorization on W. P. B. 3649.)

1. *Higher ratings.* Give purchase order number, description of item, name and address of supplier, his promised delivery date with present rating, and delivery date.

2. A request for permission to waive certain restrictions placed upon the applicant in previous authorizations, explaining in detail why the waiver is necessary.

3. *Time extension.* Explain fully why time extension is needed.

For additional facilities, machinery or equipment file W. P. B. 3649 and in item 2 give serial number and date of issuance of original authorization. Answer all applicable questions, confining answers to additional facilities only.

II. Special Instructions

A. Fill in the required information on the appropriate and in Section I the information required on the Estimated Cost and Proposed Schedule.

B. Method of entering Requirements of Materials and Equipment in Section II.

1. Enter all controlled materials, whether to be used as such or in the fabrication of Class A products, but do not enter fabricated Class A products as such. Also enter all other items to be used which are listed in the Materials and Equipment List on the reverse of page 3 of this form since no such item may be used unless so entered.

Class A products are all fabricated items which are not covered by the Materials and Equipment List in this form or by the "Products and Priorities" booklet referred to on that list. Do not enter, in addition to the items of equipment or machinery, the materials incorporated therein nor the manufactured components of such equipment items.

2. Enter first materials to be permanently and physically incorporated in the project, or wholly consumed in the course of construction. Make a separate listing of any required materials incidental to the construction but not to be incorporated therein (e. g. construction machinery and hand tools).

3. Column (b) must be a comprehensive description of material and equipment including, when pertinent, size, capacity, make and model number. Wherever possible, the material breakdown set forth in the current comprehensive Export Control Schedule of the Foreign Economic Administration should be followed in entering the items. The order in which the items should be listed is governed by the Item Number of the material and equipment as shown in the list on page 4. The lowest item numbers are entered first. Specify if new or second hand.

4. In column (c) the applicant should enter the CMP Code Number, if any, of the respective item, as shown in the Materials and Equipment List given on page 4.

5. The unit of measure entered in column (e) should be the same as that used for CMP products and other items listed in the Bill of Materials on page 4.

6. Column (g)—Enter in this column the total anticipated quantity of each item of material required to construct the project which must be imported from the United States (including both material in the applicant's possession or under his control, and material to be obtained.)

7. Column (j)—"Value U. S. Dollars" is the value of the purchase in U. S. dollars excluding installation cost. The dollar value shall be expressed in terms of F. O. B. factory selling price except that F. A. S. seaboard selling price may be used where only such price is available. On any items on which the basis for valuation is F. A. S. seaboard selling price, this shall be designated by inserting "F. A. S." above the entry in the appropriate column.

8. Column (k)—"Required delivery date" means date of delivery from manufacturer or vendor. This should be realistically considered in relation to the construction schedule, shipping time, etc. Material which is on hand should be so indicated.

9. The other columns are self explanatory.

III. Justification of Project

Attach separate letter size sheets of paper and give in the same order answers to questions as they appear below:

A. Describe the principal services to be rendered or product to be manufactured or produced; include the following:

(1) Brief description of the manufacturing process involved or services to be rendered.

(a) Explain in detail if manufacturing, and the process is new or experimental.

(2) Explain in detail the immediate need for the product or service giving:

(a) The relationship to the war effort, essential civilian needs, or public health and safety.

(b) Specific reasons why the project cannot be deferred for the duration of the war.

B. Have you made any other application or proposal related to this project or any part thereof? If so, state:

(1) Agency and address to which application or proposal was submitted and date.

(2) Action taken and date.

C. Describe the proposed project in detail, giving the following information:

(1) Whether it is a new independent project or an alteration or addition to an existing structure or installation.

(2) A clear, concise description of the construction involved including: (Submit general plans if available or show by sketches, plan and section. (Indicate dimensions.)

(a) General layout (Project limits and relation of structure.)

(b) Description of structures, installations or other construction.

(c) Type of construction (Masonry, reinforced concrete, steel, timber, etc.)

REMARKS

There exists at the present time a great shortage of cement in Colombia which is causing great difficulty in essential highway, industrial and other building construction work. Empresa Siderurgica, S. A. is the owner of large limestone deposits near Medellin, Colombia, and with this equipment can supply cement needed to sustain the national economy of Colombia and give employment there.

Further justification of project as requested in Paragraph III of Instructions is as follows:

A. (1) See explanation above
(a) Established process
(2-A) Essential to war effort and civilian economy of Colombia
(b) Because there is a shortage of cement manufacturing facilities in Colombia

C. (1) A new independent project
(2) Plant has been disassembled in the United States and will be reassembled in Colombia.

CERTIFICATION - THE UNDERSIGNED HEREBY CERTIFIES TO THE WAR PRODUCTION BOARD WITH RESPECT TO THIS APPLICATION CONSISTING OF 15 PAGES THAT:

(1) THE FACTS STATED IN THIS APPLICATION ARE, TO THE BEST OF HIS KNOWLEDGE AND BELIEF, TRUE AND CORRECT.

(2) MATERIAL SECURED AS A RESULT OF THIS APPLICATION WILL BE USED FOR THE OPERATIONS SPECIFIED HEREIN, OR TO REPLACE IN INVENTORY MATERIAL SO USED.

Henry J. Kaiser Company
NAME OF COMPANY

December 5, 1944
DATE

BY [signature]
SIGNATURE OF AUTHORIZED OFFICIAL

Washington Representative
TITLE

SECTION 35(A) OF THE UNITED STATES CRIMINAL CODE, 18 U.S.C. SEC. 80, MAKES IT A CRIMINAL OFFENSE TO MAKE A WILLFULLY FALSE STATEMENT OR REPRESENTATION TO ANY DEPARTMENT OR AGENCY OF THE UNITED STATES AS TO ANY MATTER WITHIN ITS JURISDICTION.

(WPB) War Board 1225[illegible] p. 3 (Rev.)

[fol. 110] EXHIBIT "7"

Forwarding Agents, Exporters and Importers.

Telephone: YUkon 2256.

Vanderburgh & Co., Inc.

(A California Corporation)

220 Montgomery Street

San Francisco 4, California

January 3, 1945.

Bigge Drayage Company, 24th and Campbell Streets, Oakland, California.

GENTLEMEN:

In accordance with Paragraph 10 C of our Contract with you dated December 2, 1944, you are hereby notified that on this date purchaser acquired title and we took delivery of the Cement Plant, and the undersigned as Forwarding Agent has the right to possession.

Very truly yours, Vanderburgh & Co., Inc., by (S.) Lucas A. Powe, Vice President.

This Notice Approved: Henry J. Kaiser Company, by (S.) E. E. Trefethen, Jr., Vice President; Henry J. Kaiser Company.

[fol. 111] EXHIBIT No. 8

Corporation Power of Attorney

Know All Men by These Presents, That Henry J. Kaiser Company, a corporation doing business under the laws of the State of Nevada, and having an office and place of business at 1522 Latham Square Building, Oakland, California, hereby constitutes and appoints Vanderburgh & Co., Inc., a California corporation, as a true and lawful agent and attorney of the grantor named above for and in the name, place, and stead of said grantor from this date and in Customs District No. 28, and in no other name, to make, endorse, sign, declare, or swear to any declaration,

certificate, bill of lading, or other endorsement required by law or regulation in connection with the transportation or exportation of any merchandise shipped or consigned by said grantor in connection with Export License SP No. 2086, validated by the Foreign Economic Administration December 15, 1944, and/or any amendment or supplement thereto; to perform any act or condition which may be required by law or regulations in connection with such merchandise; giving to said agent and attorney full power and authority to do anything whatever requisite and necessary to be done in the premises as fully as said grantor could do if present and acting, hereby ratifying and confirming all that the said agent and attorney shall lawfully do by virtue of these presents; the foregoing power of attorney to remain in full force and effect until the 31st day of December, 1945, or until notice of revocation in writing is duly given to and received by the Collector of Customs of the district aforesaid.

[fol. 111a] In Witness Whereof, the said corporation has caused these presents to be sealed and signed by its Secretary, City of Oakland, State of California, this 18th day of January, 1945.

Henry J. Kaiser Company, by G. G. Sherwood, Its Secretary.

STATE OF CALIFORNIA,
County of Alameda,
City of Oakland, ss:

On this 20th day of January, 1945, personally appeared before me G. G. Sherwood, residing at Oakland, California, to me known, who, being by me duly sworn, deposes and says that he is the secretary of Henry J. Kaiser Company, the corporation described in the foregoing instrument; that the seal affixed to said instrument is the corporate seal thereof and was affixed thereto by order of the Board of Directors of said company; that he by like authority subscribed the corporate name to said instrument and signed his own name thereto.

Nellie I. Phillips, Notary Public in and for the County of Alameda, State of California.

[fol. 105] EXHIBIT "6"

J. Henry Schroder Banking Corporation,
46 William Street,
New York

Cable Address "Schrobanco"
Via Airmail

Commercial Credits

January 3, 1945.

Messrs. Henry J. Kaiser Company, Oakland, California.

Irrevocable Letter of Credit No. A-19274/3439

All Drafts Drawn Must Be Marked: "Drawn as Per Letter of Credit A-19274/3439

We have opened our irrevocable letter of credit in your favor for the account of Banco de Bogota, Medellin, Colombia, on behalf of Empresa Siderurgica, S. A., Medellin, for a sum or sums not exceeding a total of $505,000.00 (Five Hundred Five Thousand U. S. Dollars).

The terms of the letter of credit provide that presentation of the following documents be made to the Bank of America, N. T. & S. A., San Francisco, Calif., not later than June 20, 1945:

1. Photostatic copy or certified copy of an export permit or license permitting the export of a cement plant to the Republic of Colombia.

2. Certificate, executed by you, stating that said permit or license covers the cement plant sold to buyer.

Thereafter this credit is available by your sight drafts drawn on the Bank of America, N. T. A. & S. A., San Francisco, Calif., as follows:

[fol. 106] a) For the sum of One Hundred Twenty-Six Thousand Two Hundred Fifty Dollars ($126,250.00) forty five days after date said copy of the export permit or license is presented.

b) For the sum of One Hundred Twenty-Six Thousand Two Hundred Fifty Dollars ($126,250.00) ninety (90) days after date said copy of the export permit or license is presented.

c) For the sum of One Hundred Twenty-Six Thousand Two Hundred Fifty Dollars ($126,250.00) one hundred thirty-five (135) days after date said copy of the export permit or license is presented.

d) For the sum of One Hundred Twenty-Six Thousand Two Hundred Fifty Dollars ($126,250.00) one hundred eighty (180) days after date said copy of the export permit or license is presented.

In the event shipment of the entire plant from Merced shall be completed prior to the time or times above specified, the purchasers shall deliver to you a certificate stating that such removal has been completed and upon the presentation of said certificate to the Bank of America, N. T. & S. A., San Francisco, Calif., any balance of the purchase price then payable shall be paid to you forthwith.

All drafts drawn under this credit must be endorsed on the reverse hereof and the credit itself must accompany the draft which exhausts the credit and must be surrendered [fol. 107] concurrently with the presentation of such draft.

J. Henry Schroder Banking Corporation. Authorized Signature ——— ———. Authorized Signature ——— ———.

The J. Henry Schroder Banking Corporation hereby undertakes that all drafts drawn in compliance with the terms of this credit shall be duly honored on presentation if presented not later than 180 days after presentation to the Bank of America, N. T. & S. A., San Francisco, of the above mentioned documents.

Very truly yours, J. Henry Schroder Banking Corporation. Authorized Signature ——— ———. Authorized Signature ——— ———.

[fol. 108] J. Henry Schroder Banking Corporation

46 William Street

New York 5, N. Y.

Cable address "Schrobanco"

Commercial Credits

Via Air Mail. January 12, 1945.

Messrs. Henry J. Kaiser Company, Oakland, California.

Re: L/C No. A19274/3439 Opened in Your Favor, on Behalf of Empresa Siderurgica, S. A., Medellin, Colombia, for Account of Banco de Bogota, Medellin, Colombia

Dear Sirs:

Please note that in accordance with instructions which we have received from our principals, we have amended the above mentioned Letter of Credit as follows:

The words, "not later than June 20,'1945" appearing in the second paragraph, have been deleted.

The words, "is presented" appearing in subsections (a) (b) (c) and (d) of the second paragraph, have been deleted and substituted by the words, "has been presented."

* * * * * * *

This amendment forms an integral part of said Letter of Credit which remains unchanged with regard to all other [fol. 109] terms and conditions.

Very truly yours, J. Henry Schroder Banking Corporation. Authorized Signature ——— ———. Authorized Signature ——— ———.

E

EXHIBIT NO. 9

Assessor's Office, Merced County.

Merced, Calif. March 5, 19 45

STATEMENT OF TAXES DUE ON PERSONAL PROPERTY OF

M UNKNOWN OWNERS

Oakdale Road near South West Corner of

ection 12-7-13

Article	Value	Rate	TAXES
P. P. AS PER STATEMENT FILED /			
Personel property located	on		
South 1/2 of South 1/4 of	Sec. 12-7-13		
	300,000.00	3.03	$9,090.00

These taxes are now due and payable. Kindly remit the amount $9,090.00 at once, and I will forward official receipt.

I have a number of deputies collecting taxes on unsecured property, whose work I have not checked up to date. If you have paid one of them, kindly return this statement with the name of the deputy and the date of payment.

J. EMMETT McNAMARA, County Assessor.

By Josed. Zinker, Deputy.

BRING THIS NOTICE WITH YOU OR ANSWER ON THE BACK OF THIS SHEET

[fol. 113] EXHIBIT "10"

Bigge Drayage Co., 24th & Campbell Sts., Oakland, Calif.

Phone—TWinoaks 1661

March 30, 1946.

Mr. Claude H. Adams, District Attorney, Merced County, Merced, California.

Mr. Scott D. Kellogg, Ward, Kellogg & Simmons, Mills Tower, San Francisco, California.

GENTLEMEN:

Subject: Empresa Siderurgica, S. A., Cement Plant, Merced, California

We have your letter of March 4, 1946, requesting us to prepare a letter to you giving the condition of the cement plant formerly owned by Yosemite-Portland Cement Co. with respect to its dismantled condition as of March 5, 1945.

Your letter states that you have agreed that 12% of the plant on that date was out of the jurisdiction of Merced County and therefore is not to be considered in our estimate.

We understand further that you have agreed that the repair parts and supplies included in the original contract and designated "Exhibit A" constitutes 20% of the total plant, and that all of this portion of the plant is to be considered in a dismantled condition.

[fol. 114] It is our understanding that you desire our estimate of the remaining 68% of the plant classified between the following stages of completion for shipment:

1. Dismantled and crated or prepared for shipment.
2. Dismantled but not crated.
3. Not dismantled.

In order to arrive at percentages for the above classifications, we have determined that, of our payroll applicable to the dismantling operation, 36% had been expended as of March 5, 1945. We have applied this 36% to the remaining 68% of the plant mentioned above, on the assumption that the 32%, representing the "Shipped" and "Exhibit A" portion of the plant, required only processing or crating and no dismantling.

The application of this 36% to 68% leaves 44% of plant as not dismantled. While we maintained no records by which an accurate estimate of the percentage of the plant "Dismantled and crated or prepared for shipment" could be determined, we believe that at least 10% of the plant was in this condition as of March 5, 1945.

A summary of the foregoing percentages follows:

1. Out of the Jurisdiction of Merced County	12%
2. Dismantled and Crated or Prepared for Shipment	10%
[fol. 115] 3. Dismantled but not Crated or Prepared for Shipment	34%
4. Not Dismantled	44%
Total	100%

Very truly yours, Bigge Drayage Co.; (S.) Henry W. Bigge, President.

WW:vh.

(Here follows 1 Photolithograph, side folio 116)

EXHIBIT NO. 11

(84A)

Paid Under Protest

Assessor's Office, Merced County

Merced, Calif., Aug. 31, 1945 No 3428

Received from Empresa Siderurgica, S.A. v Vanderbuegh & Co. Inc.

the sum of Seven Thousand Nine Hundred Ninety-Nine v 20/100 Dollars for State and County Taxes on Personal Property for the year 1945.

Assessed Value Personal Property, -	$264000	County Tax, - - - - - - - -	$7999 20
Less Householders' Exemption, - - - -	$	Lighting Tax, - - - - - - - -	$
Less Veterans' Exemption. - - - - - -	$	Special Tax, - - - - - - - -	$
Total Value Assessed, - - - - - - - - -	$264000	Special Tax, - - - - - - - -	$
Assessed Value Cash and Intangibles, -	$	Cash and Intangibles Tax, -	$
		Penalties, - - - - - - - - -	$
		Total Tax Due,	$7999 20

Eschscholtzia - MM MC

School District. Special District.

Payment Excluding 8 Cars shipped prior to Mar. 5, 1945 and 4 Cars being Loaded.

Subject to Revision by Supervisors.

J. EMMETT McNAMARA, Assessor.

By L M Brown, Deputy Assessor

[fol. 117] EXHIBIT No. 12

The Board of Supervisors of Merced County meet in regularly adjourned session this 1 day of September, 1945 at 10:00 A. M.

Present: Glenn M. Fountain, Frank E. Phinney, E. A. Griffin, Chairman; Harry P. Schmidt, J. L. Toscano, and R. W. Cothran, County Clerk.

In the Matter of correction of 1945 Assessment Roll

County Assessor J. Emmett McNamara, together with District Attorney Adams appear before the Board and Assessor McNamara requests that the 1945-46 Assessment roll be corrected as follows relative to property of Empresa Siderurgica and Vanderburgh & Co., from $300,000.00 to $264,000.00, same being for assessment reduction made because 14 cars of machinery were shipped prior to March 5, 1945, and the $300,000.00 was included in original assessment, and,

Upon motion of Supervisor Phinney, seconded by Supervisor Fountain;

It is ordered by the unanimous vote of the Board, that request of Assessor McNamara be, and same is hereby approved and allowed as requested.

October 29, 1945.

R. W. Cothran.

[fol. 118] EXHIBIT "13"

Cars Billed and Shipped

Yosemite Portland Cement Plant, Merced, California

3-2-45	ATSF	82416
3-2-45	ATSF	82624
3-3-45	ATSF	72597
3-3-45	ATSF	82679
3-5-45	ATSF	70090
3-5-45	ATSF	175007
3-5-45	ATSF	171012
3-5-45	ATSF	84599
3-14-45	ATSF	70344
3-15-45	ATSF	173947
3-15-45	ATSF	72874
3-16-45	ATSF	73631
3-17-45	WM	50982
3-17-45	PRR	358535
3-17-45	B&O	151475
3-19-45	PRR	286525

3-19-45	B&LE	36763
3-19-45	PRR	349252
3-21-45	MP	67068
3-21-45	ATSF	171486
5-5-45	ATSF	175233
5-5-45	EJ&E	80442
5-5-45	ATSF	172990
5-5-45	ATSF	175872
5-5-45	LV	34112
5-7-45	ATSF	83742
5-7-45	ATSF	174079
5-7-45	MP	29600
5-7-45	IC	94772
5-7-45	PENN	440059
6-11-45	DSS&A	10296
6-11-45	ATSF	172669
6-11-45	ATSF	175404
6-12-45	ATSF	175743
6-12-45	ATSF	170790
6-12-45	ATSF	79513
6-12-45	ATSF	172418
6-12-45	ATSF	82787
6-12-45	PRR	853119
6-12-45	ATSF	175475

[fol. 119]

6-29-45	ATSF	70174
6-29-45	ATSF	169884
6-29-45	ATSF	173414
6-29-45	ATSF	72842
6-29-45	ATSF	80904
6-29-45	ATSF	174630
6-29-45	ATSF	79831
6-29-45	ATSF	172184
6-29-45	ATSF	82436
6-29-45	ATSF	170810
6-29-45	ATSF	173481
6-29-45	ATSF	70302
6-29-45	PM	17256
6-29-45	MILW	84563
7-1-45	CB&Q	72068
7-2-45	IC	60565
7-2-45	GM&O	12363
9-12-45	MIL	600070
9-12-45	PA	471311
9-12-45	AT	90292
9-12-45	ATSF	90349
9-13-45	CBQ	91305
9-13-45	MIL	65681
9-13-45	CNW	40511
9-13-45	ATSF	97447
9-13-45	MILW	63805
9-14-45	MP	61395
9-14-45	CNW	47289
9-14-45	MIL	65716
9-14-45	RI	92695
9-14-45	ATSF	97437
9-15-45	SOU	51231
9-15-45	NYC	499157
9-15-45	WCEN	4021
9-15-45	MP	8159

9-15-45	SOOLINE	54455
9-16-45	T&P	5143
9-16-45	ATSF	83539
9-16-45	ATSF	175530
9-16-45	D&H	16041
9-16-45	ATSF	91127
9-16-45	ATSF	174045
9-27-45	CRP	105
9-27-45	CB&Q	92160
9-27-45	PRR	473835
9-27-45	NYC	499310
9-27-45	C&O	80708

[fols. 120-133]

9-27-45	BM	33561
9-27-45	ATSF	91081
9-28-45	DT&I	924
9-28-45	CGW	3817
9-28-45	SEABOARD	47241
9-28-45	ATSF	70235
9-28-45	ATSF	176035
9-29-45	ATSF	174259
9-29-45	SOUTHERN	175095
10-26-45	ATSF	83953
10-26-45	ATSF	170375
10-29-45	ATSF	81482
10-29-45	ATSF	176162
10-29-45	ATSF	82534
10-31-45	AT	97288
10-31-45	AT	172856
10-31-45	CBP	193
10-31-45	AT	90552
10-31-45	AT	83676
10-31-45	ATSF	83083
10-31-45	AT	175036
10-31-45	ATSF	83623
10-31-45	ATSF	173829
1-17-46	ATSF	175325
1-17-46	ATSF	170879
1-17-46	NYC	498315
1-17-46	ATSF	169508
1-17-46	ATSF	169732
1-17-46	ATSF	173227
1-17-46	ATSF	172857
1-17-46	ATSF	85706
1-17-46	ATSF	70474
1-17-46	ATSF	175326
1-18-46	B&O	202721
1-18-46	ATSF	169950
1-18-46	B&O	470115

[fol. 134] [File endorsement omitted]

Corrected Copy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MERCED

Compared

No. 15928

EMPRESA SIDERURGICA, S.A. a Corporation of Colombia, South America, and Vanderburgh & Co., Inc., a California Corporation, Plaintiffs,

vs.

COUNTY OF MERCED, a Municipal Corporation, J. Emmett McNamara, Assessor of the County, et als., defendants

OPINION—Filed February 19, 1947

The Plaintiff, a corporation existing and located in Colombia, South America, entered into a contract with the Henry J. Kaiser Co. on November 11th, 1944, for the purchase for exportation of a cement plant located in Merced County, California. The plant was complete and fully equipped for immediate operation in the manufacture of cement. In preparation for this export the plaintiff on December 2, 1944 employed Vanderburgh & Co., Inc., a California corporation, as its forwarding agent to effect its contemplated export. On the same day Vanderburgh & Co., Inc. employed the Bigge Drayage Co. to dismantle the plant [fol. 135] and to take the first steps looking to its shipment to its purchaser in South America.

On December 15th, 1944 a license was obtained from the United States Foreign Economic Administration approving the export of this property as contemplated by the parties. The entire sale was made contingent upon the issuance of this license.

On January 3rd 1945 the Henry J. Kaiser Company was advised that a credit had been opened in their favor of the account and on behalf of plaintiff thus affecting full payment for the plant.

On the same day, January 3, 1945, Vanderburgh & Co., Inc. and the Bigge Drayage Co. entered into possession of the property and began dismantling and crating it preparatory to shipment. This work proceeded until on March

5th; 1945, the date upon which personal property taxes are levied in California, the County of Merced levied a tax upon the parts of the cement plant which were then in that County. This tax was paid by plaintiff under protest and this is an action brought for its recovery. On the 5th day of March, the day upon which the tax was levied the condition of the plant resulting from plaintiffs work of demolition and shipment was as follows:

1. 12% of the plant had been torn down, crated and shipped away.

2. 10% had been dismantled, crated and made ready [fol. 136] for shipment.

3. 34% had been dismantled but not crated and its parts were lying about the premises.

4. 44% not dismantled; standing in place.

By January 18, 1946 the entire plant had been shipped out of Merced County and by January 29th following the entire plant had been shipped out of the State of California and out of the United States. The sole question for decision in this case is, had the entire property of the cement plant become "export" prior to March 5th, 1945 or did the part of it which remained in Merced County on that day retain its character as part of the general property of the County?

Many cases have been decided relative to this question as it arose under the Commerce Clause of the Constitution. But in the very recent case of *Richfield Oil Company* vs. *State Board of Equalization*, not yet reported, but decided November 25, 1946, the Court felt compelled to state "There are few decisions of the Court under Article 1, Section 10, Clause 2 (of the Federal Constitution) which illuminate the problem". The question is at what moment does any portion of the general property of the State which may be intended for export or for the exportation of which a contract has been made becomes "export" and ceases to be such general property and exempt from local taxation. This is substantially a question of fact and in determining [fol. 137] it the Courts are not concerned with mere formalities but by matters of substance. The very early case of Coe vs. Errol, 116 U. S. 517 which involved the commerce clause of the Constitution but which stated a rule which has been adopted as a measure where the Export-Import

clause was in question, to the effect that "goods do not cease to be part of the general mass of property, in the State, subject as such to its jurisdiction, and to taxation in the usual way until they have been shipped or entered with a common carrier for transportation to another state, or have been started upon such transportation in a continuous route or journey."

This rule has been so universally established that citations supporting it are unnecessary. It is enough to say that it was approved and applied in the Richfield case above cited. The delivery of goods to common carriers mentioned in the Coe vs. Errol case are not ends in themselves; the ultimate fact in all of these cases is, had the thing which has been done in the execution of the undertaking or contract of export resulted in committing the goods so definitely to export that the power of the exporter to defeat it is ended and that the goods may be said beyond any reasonable probability to have been so committed to exportation that there is a substantial certainty that their export will be completed. All of the cases require that something must have been done in furtherance of the export by which it can be said that the goods have "been [fol. 138] started upon" transportation. Some of the cases say that commerce does not begin until actual delivery has been made to a common carrier. But this is not essential. Such delivery is only one of the ways in which the devotion of goods to export may be accomplished.

"The certainty that goods are headed to sea and that the process of exportation has started may normally be best evidenced by the fact that they have been delivered to a common carrier for that purpose. But the same degree of certainty may exist though no common carrier is involved." Richfield Oil Corp. vs. State Board of Equalization, above.

In cases where delivery of the goods to a common carrier has been made, as stated by Chief Justice Taft, the decision is easy. "It is much more difficult" where the movement has been attended by other circumstances, or effected by other means. Hughes Bros. vs. Minnesota, 272 U. S. 469.

The question always remains, were the goods at the time a tax upon them is attempted, so definitely committed to export that the parties to the transaction have lost the

power to recall the goods or to devote them to a domestic use. There is no hard and fast rule by which the character of goods claiming the protection of Article 1, Section 10, Clause 2 of the Constitution can be unfailingly tested. Under this provision "we are concerned with matters of substance, not of form . . . the extent of its (the goods) [fol. 139] immunity from state taxation turns on the essential nature of the transaction considered in the light of the Constitutional purpose and not on the formalities with which the importation (exportation) is conducted" Hoover vs. Evatt, 324 U. S. 652, Western Oil Co. vs. Liscome 244 U. S. 346, where the Court say—"as this Court often has said it is the essential character of commerce . . . that is decisive".

In considering what so committed goods intended for export to a condition which it was held that their exportation was made reasonably certain many circumstances have been held to be sufficient which were less persuasive than the facts in this case.

In Clarke vs. Clarke, 3 Woods, 408, logs collected by a Georgia exporter and purchased for export, while still in port on the land in his possession and not sold at the time the tax was levied were held exempt where the logs had been subsequently exported. It will be noted that the logs had not been actually exported they had not even been sold for export, but the circumstances showed that they had definitely been devoted to exportation. In Texas Co. vs. Sabine Tram Co. 227 U. S. 111, lumber was shipped to a small seaport town. It was purchased for export but it had not been sold and no particular lumber set apart for any prospective purchaser but was selected and loaded as vessels arrived. The fact that the town was very small and the lumber for beyond its economic needs was given [fol. 140] consideration in determining the improbability that the lumber would not be exported. In Hughes Bros. vs. Minnesota the Court considered the fact that if a change of purpose to export was made that it would involve a breach of contract. The Hughes Bros. case is relevant here in another way. In that case pulp wood logs had been sold in Minnesota for transport to another state, the transportation to be made by floating the logs down a small river to its connection with another. In preparation for the delivery the timber was logged and the logs taken down

to the stream and placed, some of them on the ice and the balance on the bank, awaiting the breaking up of the ice. The ice broke April 29th "when the drive of the logs began, those on the ice moved by themselves and those on the bank were pushed in". The decision does not state how long it took to "push" in the logs. There were 10,000 cords of these logs and it it quite improbable that they had all been floated before May 1st which was the day upon which they were attempted to be taxed. No question of dividing the tax was raised; it seemed to be conceded that the movement of some of the logs was a beginning of a movement of them all. This would be determinative of the tax in the case before me so far as the ten per cent of the plant which was crated was concerned. When the twelve per cent. was shipped it was part of a movement of all the rest, like the logs on the bank, which was crated and ready for shipment as transportation could be had.

[fol. 141] It is an admitted fact in this case that the contemplated export of this plant was finally completed. "There has been a liberal construction of what is continuity of the journey in cases where the Court finds from the circumstances that export trade has been actually intended and carried through" Carson vs. Vial, 279 U. S. 95, 103.

The rule of decision announced in Hughes Brothers vs. Minnesota is singularly applicable to the case under discussion. There as hereinbefore stated certain logs had been sold for delivery by floating to another state. The logs had been taken to the bank of the stream where some of them had been placed on the ice and the remainder had been piled on the banks. The question was whether or not the logs had become the subject of interstate commerce before the levy of a certain tax upon them. In the course of its decision the Court said: "The conclusion in cases like this must be determined from the various circumstances. Mere intention by the owner ultimately to send the logs out of the state does not put them in interstate commerce, nor does preparatory gathering for that purpose at a depot. It must appear that the movement for another state has actually begun and is going on. Solution is easy when the shipment has been delivered to a carrier for a destination in another state. It is much more difficult when the owner retains complete control of the transportation and can change his mind and divert the delivery from the intended [fol. 142] interstate destination as in the Champlain Co.

case. The character of the shipment in such a case depends upon all of the evidential *circumstances looking to what the owner has done in the preparation for the journey and in carrying it out.*

The mere power of the owner to divert the shipment already started does not take it out of interstate commerce if the other facts show that the journey has already begun in good faith and temporary interruptions of the passage is reasonable and in furtherance of the intended transportation as in the Champlain Co. case.

Elsewhere in the opinion it is said: "The contract and the method of complying with it are all circumstances however throwing light on the question whether the transportation in interstate commerce (in our case exportation) began."

In cases like this where goods have been purchased for exportation and action has been taken in execution of that purpose it is not a question of whether any particular thing has been done, but of whether or not what has been done in furtherance of a contract of export has so far committed the goods to exportation that there is no reasonable probability that the proposed export will not be concluded; that there remains no reasonable question or hypothesis upon which their exportation can be doubted. I think that it can be said that when the tax was levied upon the materials in [fol. 143] this case that it had become substantially certain that the mechanisms constituting the plant would be exported, as they subsequently were. This seems unquestionable when the facts as they existed March 5, 1944 are viewed from their several angles:

1. The materials of the plant became committed to export when the Bigge Company began dismantling the building. At that time the plaintiff had spent a great deal of time and effort in furtherance of his intention to export the whole plant. The firmness of its intention to export this property is shown by the fact that it would not commit itself to its purchase until it had obtained a license permitting its export. It had paid for the property. Before the Bigge Company had attacked it the plant had been a complete manufacturing unit. Immediately thereafter it was in process of destruction as such; the complete demolition of the structure was certain, the plaintiff was under contract to take it down and remove it from the premises. The plant could not have been re-erected upon its existing site; the

plaintiff did not own it. At that time it was certain that what had been the building would soon be a mass of parts. In the circumstances it was certain that they would come to be such at the time the Bigge Company first went to work.

These parts when placed in some warehouse or laid out on some lot which the plaintiff might secure would be mere "scrap" and of merely speculative value for any purpose except for the use for which they were purchased.

[fol. 144] I think that the payment for the property and proceeding to change it from parts in place of a complete building, into a mass of disconnected materials made the completion of the exportation economically imperative. This was not a mere preparation of the plant for exportation; by such action and change the parts had "been started upon such transportation" with the degree of certainty demanded by Coe vs. Errol and the many cases which have endorsed it.

In this case, stronger than in the Hughes Bros. case the first owner of the plant had been paid for his plant and it was at that time in the sole possession of the Plaintiff. Thus one source of uncertainty as to whether the purpose to export would be executed did not exist; the Kaiser Company could not prevent it. The only contingency upon which the export would be abandoned after the demolition of the building had become assured was therefore, that the plaintiff would abandon his purpose and sell the parts here at a substantial loss, or re-erect the plant in California where the plaintiff was not engaged in business. This suggests an improbable hypothesis. "There was not the slightest probability of any such change, and it did not occur" Spaulding Bros. v. Edwards, 262 U. S. 66.

In reaching this conclusion I am not considering the shipment of the twelve per cent of the property which was later exported as this fact was not certain at the time the Bigge Company began taking the building down.

[fol. 145] 2. If the exportation of the materials of the plant was not before assured, that became certain when the twelve per cent of the corpus of the building had been sent abroad. In support of this conclusion I repeat all of the elements of certainty of export mentioned above and in addition I cite this circumstance. Whatever possibility there might have been that after plaintiff had torn the plant down and carried the parts off the premises that it would sell

them or re-erect them into a plant in California would be rendered extremely improbable when it appeared that it had kept here only a part of the materials of the plant which of course could not be sold as the materials from which a plant could be built or used to reassemble the old one.

3. When the building was in process of demolition and twelve per cent of its parts had been exported the entire plant was in process of "movement" toward the sea, as required by the source case of Coe vs. Errol. The plant was a unit composed of many parts. It was of great size and weight and could only be moved through moving the parts as they were moved here. When the first shipments were made from the plant we would not say that the contractors were moving a beam or a brace; we would say that they had begun to move the plant, that the entire property was in process of moving. It could not be said as part after part of the plant had been moved down to the last rod or pulley, that what was left had remained unmoved in a very appre- [fol. 146] ciable way every abstraction from the building affected what was left. If a body of stevedores had been hired to unload a ship, at their first movement we would not say that they were moving a piano, or a sack of wool, we would say that they were unloading the ship. In this case when the plaintiff exported twelve percent of the plant and was in process of shipping the rest the movement of the whole plant toward the sea had begun, as in the Hughes Brothers case where the first logs were being "pushed" into the stream the whole mass was being pushed in.

For the reasons stated there could remain no reasonable doubt that at the time the tax was levied that the whole shipment would be made as it finally was.

"The means of shipment are unimportant as long as the certainty of the foreign destination is plain." Richfield Oil Co. vs. State, supra. Where the Court finds from the "circumstances" that an export trade had been actually intended and carried through the Court will be liberal in construing the manner in which the export had been executed. Carson Petrol Co. vs. Vial, 279 U. S. 95.

The Judgment will be for the Plaintiff.

Dated: Jany. 31, 1947.

(S.) Peter J. Shields, Judge Superior Court.

The above is for substitution of the opinion filed Feby. 3rd, 1947 and is an exact duplicate of it with the exception of the correction of a few clerical errors which occurred in the copy first filed. This copy to be the official copy.

Peter J. Shields, Judge.

[fol. 147] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MERCED

No. 15928

EMPRESA SIDERURGICA, S. A., a Corporation, et al., Plaintiffs,

vs.

COUNTY OF MERCED, a Municipal Corporation, et al., Defendants

JUDGMENT—Filed March 20, 1947

The above-entitled cause came on regularly for trial on the eighth day of November, 1946, before the Court sitting without a jury, a jury having been expressly waived, Scott D. Kellogg and Betsy FitzGerald Rahn appearing for plaintiffs, and Claude H. Adams appearing for defendants, and evidence consisting of a Stipulation and Agreed Statement of Facts to which certain documents were attached and incorporated by reference having been introduced and the cause submitted for decision, and the Court having heretofore made and caused to be filed herein its written findings of fact and conclusions of law, and being fully advised;

Wherefore, by reason of the law and the findings of fact aforesaid, it is Ordered, Adjudged, and Decreed that the plaintiff, Empresa Siderurgica, S. A. do have and recover of [fol. 148] and from the defendant, County of Merced, a municipal corporation, the sum of $7,999.20 with interest thereon at the rate of five (5) per centum per annum from August 31, 1945, until paid, together with plaintiff's costs and disbursements incurred in said action amounting to the sum of $7.50.

Dated: March 19th, 1947.

(S.) Peter J. Shields, Judge Pro Tem of the Superior Court of the County of Merced, State of California.

[fol. 149] [File endorsement omitted]

[Title omitted]

IN SUPERIOR COURT OF MERCED COUNTY

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed March 20, 1947

This case coming on regularly to be heard on the 8th day of November, 1946, before the Court sitting without a jury, a jury having been expressly waived, Scott D. Kellogg and Betsy FitzGerald Rahm appearing for plaintiffs, and Claude H. Adams, District Attorney of Merced County appearing for defendants, and evidence consisting of a Stipulation and Agreed Statement of Facts to which certain documents were attached and incorporated by reference having been introduced and the cause submitted for decision, the Court now makes its findings of fact as follows:

FINDINGS OF FACT

No testimony was offered or evidence received at the hearing hereof, but it appeared that preceding the trial the [fol. 150] parties hereto had prepared and agreed upon the facts in the case and had reduced their agreement to writing. When the above entitled cause was called for trial and the trial had been entered upon, it was stipulated in open court by the attorneys herein, representing all of the parties hereto, that the case should be submitted upon said statement of facts and that no other or further evidence should be received or heard.

Now, therefore, the Court finds the facts herein to be as stated in said Stipulation and Agreed Statement of Facts now on file in the office of the County Clerk of the County of Merced, State of California, entitled as herein, filed on the 5th day of July, 1946, and denominated as "Stipulation and Agreed Statement of Facts".

The Court further finds that the cement plant involved in this action was purchased by the plaintiff, a corporation existing in and resident of Colombia, South America; that it was purchased for the purpose of exporting it to that place, and that it was finally so exported. That in pursuance of its purpose to export the said cement plant, the plaintiff, prior to March 5th, 1945, paid for said plant and took possession thereof. That said purchaser entered into

a contract by which it employed aVnderburgh & Co., Inc., an exporting corporation as its forwarding agent.

That prior to March 5, 1945, the plaintiff obtained from the Federal Government an export license permitting the [fol. 151] export of the cement plant.

That prior to March 5, 1945, Biggee Drayage Co. was employed to dismantle the plant and to attend to its shipment, and that it had entered upon the performance of that employment.

The Court further finds that the plaintiff purchaser had no use for the dismantled parts of the cement plant, in this country, or any use for such parts except for exportation, the use for which such plant and its parts were purchased.

The Court further finds that on March 5, 1945, the day upon which the parts of the plant were attempted to be taxed, the condition of the plant and the constituent parts thereof was as follows:

12% of the plant represented by parts thereof had been shipped out of the County of Merced.

10% dismantled and crated and prepared for shipment.

34% dismantled but not crated or prepared for shipment.

44% not dismantled.

Conclusions of Law

I

That on March 5, 1945, the proposed exportation of the cement plant was in process of execution and that before and on that day the plant and the parts thereof were moving or being made to move toward Colombia, South America.

[fol. 152]

II

That on March 5, 1945, the cement plant and the parts thereof were so definitely committed to exportation and had advanced so far in the execution of a planned and finally accomplished exportation that its taxation was prohibited by Article I, Section 10, Clause 2 of the Constitution of the United States.

III.

That the attempted taxation of the cement plant and the parts thereof as attempted by defendants was without authority of law and void under the provisions of the Constitution of the United States.

IV.

That judgment should be given herein in favor of the plaintiff Empresa Siderurgica, S. A. to have and recover of and from the defendant, County of Merced, a municipal corporation, the sum of Seven Thousand Nine Hundred Ninety-nine and 20/100 ($7,999.20) Dollars, with interest thereon at the rate of five (5%) percent per annum from August 31, 1945, until paid, together with plaintiff's costs and disbursements incurred in said action amounting to the sum of Seven and 50/100 ($7.50) Dollars.

Dated March 19th, 1947.

(S.) Peter J. Shields, Judge Pro Tem of the Superior Court of the County of Merced, State of California.

[fol. 153] [File endorsement omitted]

[Title omitted]

IN THE SUPERIOR COURT OF MERCED COUNTY

NOTICE OF ENTRY OF JUDGMENT—Filed April 8, 1947

To the Defendants above named and to Their Attorney, Frank C. Hale, Esq.:

You will please take notice that on March 20, 1947, judgment was entered herein in favor of the plaintiff, Empresa Siderurgica, S. A., and against the defendant, County of Merced, a copy of said judgment is attached hereto and incorporated herein by reference.

Dated: April 7, 1947.

Ward, Kellogg, Simmons & Warren, by Scott D. Kellogg, Attorneys for Plaintiffs.

[fol. 154] Judgment Omitted. Printed side page 147 ante.

[fol. 155] (Affidavit of Service by Mail—1013a, C.C.P.)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Scott D. Kellogg, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county of aforesaid; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is 923 Ninth & Hill Building, Los Angeles 15, California, that on the 7th day of April, 1947, affiant served the within Notice of Entry of Judgment on the Defendants in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said Defendants at the office address of said attorney, as follows:

Frank C. Hale, Esq.
District Attorney
Merced County
Merced, California:

and by then sealing said envelope and depositing the same, [fol. 156] with postage thereon fully prepaid, in the United States Mail at the city where is located the office of the attorney for the person by and for whom said service was made.

That there is a delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

Scott D. Kellogg.

Subscribed and sworn to before me this 7th day of April, 1947. Dorris Copeland, Notary Public in and for Said County and State of California. My Commission Expires May 11, 1949. (Seal.)

[fol. 157] [File endorsement omitted]

[Title omitted]

IN SUPERIOR COURT OF MERCED COUNTY

NOTICE OF APPEAL TO SUPREME COURT—Filed May 17, 1947

To the Clerk of the Above-entitled Court:

You will please take notice that the defendants in the above-entitled action hereby appeal to the supreme court of the State of California, from the judgment therein entered, in the said superior court, on the 19th Day of March, 1947, in favor of the plaintiff in said action, and against said defendants; and from the whole thereof.

Dated this 17th day of May, 1947.

Frank C. Hale, District Attorney, by Samuel V. Cornell, Attorney for Defendants.

[fol. 158] [File endorsement omitted]

[Title omitted]

IN SUPERIOR COURT OF MERCED COUNTY

NOTICE TO PREPARE PAPERS ON APPEAL—Filed May 19, 1947

To the Clerk of the Above-entitled Court:

Please take notice that the defendants have appealed from the judgment heretofore entered in the above-entitled action, on the 19th day of March, 1947, in favor of the plaintiffs, Empresa Siderurgica, S. A., et al., in said action and against the defendants, and from the whole thereof, and request that a clerk's transcript and a transcript of the testimony offered or taken, the evidence offered or received, all rulings, instructions, acts, or statements of the court, and this said notice to the county clerk to prepare the papers on appeal be made up and prepared.

Frank C. Hale, District Attorney, by Samuel V. Cornell, Attorney for Defendants.

[fol. 159] [File endorsement omitted]

[Title omitted]

IN SUPERIOR COURT OF MERCED COUNTY

SUPPLEMENTAL NOTICE TO PREPARE PAPERS ON APPEAL—Filed May 23, 1947

Please take notice that the defendants have appealed from the judgment heretofore entered in the above-entitled action, on the 19th day of March, 1947, in favor of the plaintiffs, Empresa Siderurgica, S. A., et al., in said action and against the defendants, and from the whole thereof, and request that a clerk's transcript and a transcript of the testimony offered or taken, the evidence offered or received, all rulings, instructions, acts, or statements of the court, including the opinion of trial judge on file herein, and this said notice to the county clerk to prepare the papers on appeal be made up and prepared.

Frank C. Hale, District Attorney, Merced, California,
Attorney for Defendants.

[fols. 160-161] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 162] IN THE SUPREME COURT OF CALIFORNIA

Sacramento No. 5893

EMPRESA SIDERURGICA, S. A., a Corporation of Colombia, South America, and Vanderburgh & Co., Inc., a California Corporation, Plaintiffs and Respondents,

vs.

COUNTY OF MERCED, a Municipal Corporation; J. EMMETT MCNAMARA, Assessor of the County of Merced; et al., Defendants and Appellants

DOCKET ENTRIES

September 30, 1947. Filed Transcript C 1 R 1 from J.
December 29, 1947. Filed Affidavit for Time and Order App't to 1-28-48.

February 4, 1948. Filed Substitution of Attorneys: Scott D. Kellogg in lieu of Ward, Kellogg, Simmons & Warren for respondents.

February 4, 1948. Ordered on Bank Calendar, Sac, Mar. 3, 1948.

February 10, 1948. Filed Appellants opening Brief.

Mar. 3, 1948. Cause Called, Submission deferred pending filing of briefs.

Mar. 3, 1948. Filed Stip: Resps. to May 10, 1948, to file brief.

April 3, 1948. Ordered on Bank Calendar, S. F., May 4, 1948.

[fol. 163] April 5, 1948. Filed Respt. Brief.

April 30, 1948. Filed Appellants Reply Brief.

May 4, 1948. Argued and Submitted.

June 15, 1948. The Judgment is Reversed.

Edmonds, J.

We concur:

Gibson, C. J.; Shenk, J.; Carter, J.; Traynor, J.; Schauer, J.; Spence, J.

January 30, 1948. Filed Respondent's Petition for Rehearing (Due 7-15-48).

July 7, 1948. Filed Answer to Petition.

July 8, 1948. Rehearing Denied.

July 16, 1948. Remittitur Issued.

August 19, 1948. Filed Petition for Appeal, Assignment of Errors, and Prayer for Reversal.

August 19, 1948. Filed Statement as to Jurisdiction.

August 19, 1948. Filed Order Allowing Appeal.

August 19, 1948. Filed Citation on Appeal.

August 19, 1948. Filed Cost Bond ($500.00)—Indemnity Insurance Co. of N. A.

August 19, 1948. Filed Notice of Appeal and Statement under Rule 12.

August 19, 1948. Filed Praecipe for Transcript on Appeal to U. S. Supreme Court.

August 19, 1948. Filed Proof of Service on Appellee.

September 3, 1948. Filed Statement of Atty. Gen.—Opposing Jurisdiction and Motion to Dismiss or Affirm.

[fols. 164-165] September 21, 1948. Filed Stipulation Deleting Unofficial Opinion of Judge Shields from Record Certified to Supreme Court of the United States.

September 21, 1948. Filed Statement of Points On Which Appellants Intend to Rely, and Designation of Record.

September 22, 1948. Filed Stipulation for Correction of Opinion of Trial Court.

[fol. 166] IN SUPREME COURT OF CALIFORNIA

[Sac. No. 5893. In Bank. June 15, 1948]

EMPRESA SIDERURGICA, S.A., (a Corporation of Colombia, South America) et al., Respondents,

v.

COUNTY OF MERCED, et al., Appellants

Appeal from a judgment of the Superior Court of Merced County: Peter J. Shields, Judge assigned. Reversed.

Action to recover taxes paid under protest. Judgment for plaintiffs reversed.

Fred N. Howser, Attorney General, James E. Sabine, Deputy Attorney General, and Frank C. Hale, District Attorney, for Appellants.

Scott D. Kellogg, Raymond Salisbury and Betsy Fitz-Gerald Hahn for Respondents.

OPINION

EDMONDS, J.

The status of personal property sold to a foreign purchaser but in this state on tax day is the question presented for decision by the county of Merced upon its appeal from [fol. 167] an adverse judgment in an action to recover taxes. Although part of the property had been prepared for export, the greater portion of it was not in that condition and all of it was located at the plant of the seller in Merced County.

The following facts were presented by stipulation. In November, 1944, Empresa Siderurgica, S. A., a corporation organized under the laws of Colombia, South America, agreed to buy from Henry J. Kaiser Company the machinery and equipment of a cement plant. The contract of sale provided that title to the property should be transferred to the purchaser whenever it had furnished a letter of credit and

an export license issued by the appropriate governmental agency.

Early in January, 1945, the required license had been obtained and a satisfactory letter of credit covering the unpaid balance of the purchase price deposited with a bank. The work of dismantling the plant and packaging it for shipment was then commenced by Bigge Drayage Company, pursuant to a contract made by it with the purchaser's forwarding agent. The Bigge Company conducts a general trucking business and is a common carrier by motor vehicle, licensed by the Interstate Commerce Commission to engage in interstate and foreign commerce.

The dismantling and packaging operations continued expeditiously, with due regard for war-time shipping conditions, throughout the succeeding months, the packages being labeled at the plant site with the name of Empresa, as consignee. The specified place of delivery was Medellin, Colombia, South America. By March 5, 1945, the statutory date for the assessment of property for the tax year 1945-46, 12 per cent of the plant had been shipped out of the county; 10 per cent had been dismantled and crated or prepared for shipment; 34 per cent had been dismantled but not crated or prepared for shipment; and 44 per cent had not been dismantled. Not later than January 18, 1946, all of the machinery had been shipped out of the county of Merced on cars of the Atchison, Topeka, and Santa Fe Railway Company, and before the end of that month was enroute to South America by ocean carrier.

The original assessment, made upon the basis of the value of the entire plant, was reduced by the board of supervisors to require payment of taxes only upon the 88 per cent of the plant which was in the county on tax day. Empresa paid under protest the amount of the tax computed accordingly.

The position of the county is that, on tax day, none of the property assessed had begun its journey to a foreign destina- [fol. 168] tion and, therefore, had not acquired the status of an export. Until the goods have been delivered to a common carrier for transportation, they say, such property is not an export and may be taxed. Empresa maintains that, at the time of the assessment, the plant was an export because by the agreement for the sale of the property the parties intended foreign shipment and neither party could prevent its exportation without breaching the contract. It is also argued that because of Bigge's license as a common carrier, the delivery of possession to that company was the

same as delivery to a railroad or a ship; the foreign destination was fixed and if on tax day any part of the plant was an export, all of it came within that category.

[1] Article I, section 10, clause 2, of the Constitution of the United States provides: "No State shall without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports. . . . ." The trial judge determined, as a matter of law, that when the goods have been committed to exportation, a tax imposed upon them amounts to taxation of an export. Another basis for the decision was that "proceeding to change . . . [the plant] from parts in place of a complete building, into a mass of disconnected materials made the completion of the exportation economically imperative. This was not a mere preparation of the plant for exportation; by such action and change the parts had 'been started upon such transportation' with the degree of certainty demanded by *Coe* v. *Errol,* [116 U. S. 517 (6 S. Ct. 475, 29 L. Ed. 715)] and the many cases which have endorsed it."

In the Coe case logs had been floated down a river to the town of Errol, where they were to be shipped in interstate commerce. The town's assessment of them was attacked upon the ground that, at the time of the levy, they were in such commerce and not subject to taxation. The court, in deciding against the property owner, stated that "no definite rule has been adopted with regard to the point of time at which the taxing power of the State ceases as to goods exported to a foreign country or to another State." (P. 527.) But it declared "that such goods do not cease to be part of the general mass of property in the State, subject, as such, to its jurisdiction, and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation to another State, or have been started upon such transportation in a continuous route or [fol. 169] journey. . . . . It seems to us untenable to hold that a crop or a herd is exempt from taxation merely because it is, by its owner, intended for exportation. If such were the rule in many States there would be nothing but the lands and real estate to bear the taxes. Some of the Western States produce very little except wheat and corn, most of which is intended for export; and so of cotton in the Southern States. Certainly, as long as these products are on the lands which produce them, they are part of the general

property of the State. And so we think they continue to be until they have entered upon their final journey for leaving the State and going into another State. . . . But this movement does not begin until the articles have been shipped or started for transportation from the one State to the other. The carrying of them in carts or other vehicles, or even floating them, to the depot where the journey is to commence is no part of that journey. That is all preliminary work, performed for the purpose of putting the property in a state of preparation and readiness for transportation. Until actually launched on its way to another State, or committed to a common carrier for transportation to such State, its destination is not fixed and certain" (pp. 528). Although this decision was based upon the commerce clause of the Constitution, the same principles have been stated and followed in the few cases which have applied either article I, section 10, clause 2, or article I, section 9, clause 5 of the Constitution. (*Richfield Oil Corp.* v. *United Bd. of Eq.*, 329 U. S. 69, 79 [67 S. Ct. 156, 91 L. Ed. 80]; *Turpin* v. *Burgess*, 117 U. S. 504, 506 [6 S. Ct. 835, 29 L. Ed. 988]; *Brown* v. *Maryland*, 12 Wheat. (U. S.) 419 [6 L. Ed. 678].)

In *Von Hamm-Young Co.* v. *City and County of San Francisco*, 29 Cal. 2d 798 [178 P. 2d 745, 171 A. L. R. 274], relied upon by Empresa, goods purchased in San Francisco and moved from the place of purchase to warehouses to await shipping space were held to be exempt from tax because of the commerce clause. It was there said that "the movement of the goods from the place of purchase to the warehouses must be considered a movement in interstate commerce . . ." (P. 807.) In the present case, there was no movement of the goods from the place of purchase. The Bigge Company, which had the contract for dismantling and packaging, performed this function at the plant site. Eventually, the packaged goods were delivered to the railroad company, whose tracks ran alongside the plant site, for transportation to the port of embarkation. But except for the 12 per cent of the machinery which was not in the [fol. 170] county on tax day, none of the packages had been delivered to the railroad carrier.

In the Richfield Oil Corporation case, *supra*, the court said: "The certainty that the goods are headed to sea and that the process of exportation has started may normally be best evidenced by the fact that they have been delivered to a common carrier for that purpose. But the same degree

of certainty may exist though no common carrier is involved." (P. 82.) In that case the plaintiff corporation sold oil to the New Zealand government f.o.b. its tanker at Los Angeles for export to that country. Although title passed upon delivery to the tanker, a sales tax was levied against the gross amount of the sale. After payment, plaintiff sued for refund, invoking the exemption of section 10, article I of the Constitution. The tax was held invalid because delivery to the purchaser's carrier constituted the commencement of exportation to the same extent as would delivery to a common carrier in the usual situation. The court stated, "Delivery was made into the hold of the vessel from the vendor's tanks located at the dock. That delivery marked the commencement of the movement of the oil abroad." (P. 83.) As in *Coe* v. *Errol*, *supra*, the determining factor was not the owner's intention to export but whether or not exportation had commenced.

[2] On tax day, the machinery which is the subject of the assessment here under attack had been delivered into the possession of the forwarding agent for the purpose of packing and shipping it. But the preparations for shipment, including the preparation of foreign documents and bills of lading, negotiations for shipping space by rail and sea and incidental activities in readying the machinery for shipment out of the country are not the equivalent of delivery to a common carrier for transportation. The fact that the Bigge Company was licensed as a common carrier in interstate and foreign commerce is not material, for it was not employed to perform the functions of such a carrier; it undertook only to dismantle and prepare the property for shipment. It cannot, therefore, be seriously contended that delivery of possession to Bigge was equivalent to delivery to a common carrier for transportation.

[3] The property owner's argument that because 12 per cent of the plant had been shipped out of the county and was clearly an export, the remaining 88 per cent, whether dismantled and packaged or not, was likewise an export, cannot [fol. 171] be sustained. This contention assumes that intention to export rather than the commencement of exportation is the determining factor. The fact that a portion of the plant had actually been shipped is not controlling as to that portion which was in the process of preparation for exportation, although there can be no question concerning the

owner's intention to take it out of the country. "The exemption attaches to the export and not to the article before its exportation. . . ." (*Cornell* v. *Coyne*, 192 U. S. 418, 427 [24 S. Ct. 383, 48 L. Ed. 504].)

The judgment is reversed.

Gibson, C. J., Shenk, J., Carter, J., Traynor, J., Schauer, J., and Spence, J., concurred.

[fol. 172] Clerk's Certificate to foregoing paper omitted in printing.

[fols. 173-174] [File endorsement omitted]

[fol. 175] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

RESPONDENTS' PETITION FOR A REHEARING—Filed June 30, 1948

To the Honorable Phil S. Gibson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:

The respondents, Empresa Siderurgica, S. A. et al., respectfully petition the Court for a rehearing in the above entitled case.

[fol. 176] In their briefs appellants urge that a complete and operating cement plant which was sold as a unit must all be delivered to a railroad common carrier before it becomes an export but concede if part of the unit has been delivered to a railroad common carrier, that part is exempt from tax. They also compare the dismantling and packaging to the manufacture of filled cheese, the raising of cattle and the growing of grain. The Court concludes that Article I, Section 10, Clause 2 of the Constitution permits a tax on part of an export even though all of the acts done were only the regular steps to effect its exportation.

We assume, therefore, that the only question which now concerns the Court is the application of Article I, Section 10, Clause 2, to the facts in this case.

The Court relies primarily upon the decision of the United States Supreme Court in *Richfield Oil Corp. v. State Board*, 329 U. S. 69 as stating the rule that there must be delivery to a carrier and does not cite or discuss the decision of the United States Supreme Court in *A. G. Spalding & Brothers v. Edwards*, 262 U. S. 66. It is respectfully submitted that both of these cases affirm the fundamental rule that the certainty that goods are headed to sea may exist though no carrier is involved.

The Court's failure to discuss the *Spalding* case and by comparing dismantling and packaging, which are the usual and regular steps in the process of exportation, to manufacturing of articles or growing crops, coupled with its [fol. 177] failure to follow the plain teachings of the decisions of the United States Supreme Court in every case involving an export, in our eyes, makes further consideration of the case necessary. Coming at a time when California has the opportunity to become one of the foremost States in international trade, this decision is viewed with concern and may well defeat the policies and purposes of the legislature and the business and labor groups in this State in the encouragement of foreign trade.

We propose to show:

(1) That the facts found by the Court were different from the facts presented by stipulation to the trial Court.

(2) That dismantling and packaging of an entire cement plant are the usual, regular and necessary steps in the process of exportation.

(3) That dismantling and packaging are not the same as manufacturing or growing crops.

(4) That delivery to export forwarding agent has been held to commit goods as an export.

(5) That the Court did not cite nor refer to the *Spalding* case relied upon by respondents.

(6) That export cases are concerned with matters of substance not of form.

The emphasis in quotations in our argument is ours.

[fol. 178] I

The Facts Are Different

It is respectfully submitted that the facts as presented to the trial Court by stipulation reflect the following to be true:

The status of personal property consisting of the major portion of an entire cement plant in this state on tax day (the remaining portion having already been shipped out of the County) is the question presented for decision by the County of Merced upon its appeal from an adverse judgment in an action to recover taxes. Part of the cement plant had been shipped out of the County and in the course of transportation to the foreign destination, part had been prepared for export, and the greater portion of it was not in that condition and all of the plant except that which was shipped was located at its situs in Merced County.

The Court's attention is called to the following references in said stipulation:

Negotiations were entered into "for the purchase of the *Yosemite Portland Cement Plant*, its machinery and equipment." (C.T. 34.)

". . . Henry J. Kaiser Company entered into a written contract for the sale to Empresa Siderurgica, S. A. of that certain property known as *Yosemite Portland Cement Plant*. . . ." (C.T. 34-35.)

The forwarding agent ". . . entered into a contract with Bigge Drayage Co., . . . to dismantle the said *cement plant*, disassemble the equipment, package the same for shipment [fol. 179] and deliver said *cement plant* for shipment to Medellin, Colombia, S. A. That said *cement plant* was delivered by Bigge Drayage Co. to the Atchison, Topeka and Santa Fe Railway Co. at the plant site for transportation by rail to the point of embarkation; that all of the plant was shipped from the point of embarkation by water carrier to Colombia, South America. . . ." (C.T. 35-36.)

"For the purposes of this statement of facts and to denote the various companies and contracts, we refer to the *Yosemite Portland Cement Plant* as '*cement plant*'; . . ." (C.T. 36.)

" 'After such transfer of title, all risk and liability for any loss or damage to the *cement plant*, of any nature whatsoever, shall be upon the Transfer Agent and/or Purchaser, . . .' " (C.T. 37.)

The Export License issued by the United States Foreign Economic Administration described the export as "constitute the total known requirements for this *cement manufacturing plant.*" (C.T. 104.)

". . . a letter of credit covering the balance of the purchase price of said *cement plant* was deposited. . . ." (C.T. 38.)

Forwarding agent wrote Bigge Drayage Co. ". . . you are hereby notified that on this date purchaser acquired title and we took delivery of the *cement plant*, . . ." (C.T. 38.)

". . . Kaiser Company gave to Vanderburgh a power of attorney to do and perform on its part and behalf any [fol. 180] thing or act necessary or proper in connection with transportation or exportation . . . under export license SP#2086 issued to Kaiser Company and covering the said *cement plant;* . . ."

". . . actual shipment of the said *cement plant* and equipment continued expeditiously with due regard for war time shipping conditions throughout January, 1945, and the succeeding months; . . ." (C.T. 39.)

". . . County Assessor of Merced County assessed personal property taxes in the sum of Nine Thousand Ninety Dollars ($9,090.00) against the said *cement plant*. . . . At the time of such assessment, twelve per cent (12%) of the dismantled plant were out of the jurisdiction of the County of Merced." (C.T. 39-40.)

The attention of the Court is respectfully called to the fact that throughout the stipulated statement of facts, the cement plant is treated as a unit and referred to as such.

Even the Assessor when taxing the plant on March 5, 1945, considered the plant as a unit and taxed it as such. (C.T. 40.)

The intention that the cement plant was to be reassembled at its foriegn destination may be had by reference to the

Bigge contract and re-emphasizes the fact that the plant was a unit.

Paragraph 12. "The work of dismantling the Cement Plant is to be performed . . . in the manner which . . . is likely to do the least possible damage to the various parts thereof. . . ." (C.T. 58.)

[fol. 181] Paragraph 14. "Contractor shall take at least one photograph of each machine or piece of equipment before dismantling said machine or piece of equipment, and shall also take at least one photograph after such machine or piece of equipment is dismantled. Such photographs shall be numbered and bear the same identification marks as the parts of which they are pictures, and shall be kept in numerical order, or such other adequate filing system, as may be approved by Representative so as to be readily accessible to persons reassembling the plant." (C.T. 59.)

Paragraph 18. "All separations shall be made at the point of joinder, and there shall be no cutting or disassembling of any part of the Cement Plant which will have as its effect the weakening of the structure or parts when such structure or parts are reassembled, . . ." (C.T. 61.)

Paragraph 19. "All cylindrical parts are to be separated at the point of joinder . . .; provided, however, that if any single section without a point of joinder is more than 25′ in length or 125″ in diameter, said section shall be shipped as a unit and shall not be cut or divided to meet the above limitations. . . ." (C.T. 61-62.)

Paragraph 20. "All parts other than the cylindrical sections shall be separated at their point of joinder. . . . Provided, however, that if any single section without a point of joinder is more than 25′ in length, 140″ in width and 80″ in height or weighs more than 5 thousand kilos, said section [fol. 182] shall be shipped as a unit and shall not be cut or divided to meet the above limitations. . . ." (C.T. 62.)

Paragraph 33. "The Contractor shall match-mark all parts of the plant and equipment . . ., and all machines must have a master identification mark. All manufacturers' identification marks and/or serial numbers shall be preserved. All marking and numbering shall be done with waterproof paint or paint covered with shellac." (C.T. 64-65.)

Kaiser could not deliver only 12% of the cement plant and retain 12% of the purchase price nor could Bigge dismantle and package 12% of the cement plant and retain 12% of the contract consideration. It had to be 100%.

Looking at the apportionment approved by this Court, we find the facts completely disregarded. A cement plant less twelve percent is no cement plant at all. Nor is 88% of a cement plant, a cement plant.

Preceding the negotiations for the purchase of the Yosemite Portland Cement Plant, Empresa had looked at several in the United States. They had looked at only operating cement plants because an operating cement plant was what was needed and nothing less than that would meet their needs. It was insisted at the time the contract was being prepared that Kaiser make the following warranty: "Seller represents that said cement plant was being operated until July 1, 1944, that Seller purchased said cement plant from its former operator in operating condition as of that time, [fol. 183] and Seller warrants that it has not thereafter sold or removed any equipment or property from said cement plant. . . ." (C.T. 46.).

The tax was first assessed as to the entire cement plant as an operating cement plant at its valuation for tax purposes. Then when it was learned that under no theory could there be any tax on the part of the cement plant which was on its way to South America, the tax was reduced by calculating that 14 cars out of a total of 123 shipped is 12% and that therefore one cement plant less 14 carloads should be taxed at 12% less than a complete and operating cement plant should be taxed. This is obviously overlooking the realities of the situation. An automobile with all its working parts is a valuable machine. Without a motor or the availability of a motor, it is valueless except for junk. This is precisely the situation with respect to the cement plant. There were few operating cement plants for sale in the world and cement had became a war scarcity. It was in the interest of the war effort that Colombia should have a cement plant and as no new cement plants could be manufactured nor could the parts be manufactured, Colombia had to take a plant which had been used. A cement plant less 14 carloads was of no value to them, nor was it of any value to the Seller. Its value could only be calculated as junk or

by the ton. It is not conceivable that the value of 109 carloads of junk iron and steel would be of the value of $8,000.00, yet this is the tax which is to be sustained.

[fol. 184] It is respectfully submitted that the statement of facts should reflect that an entire operating cement plant was sold and delivered to the foreign purchaser and that a portion of the cement plant (12% or 14 carloads) was in transit and in the course of commerce to South America on the tax day. That the tax was originally assessed against the entire plant and later reduced by the 12% in recognition of the shipment of part of the cement plant. That dismantling, packaging and shipping operations continued expeditiously and continuously from January 1945 at the time title passed to the foreign purchaser until the entire plant had been completely shipped out of the County of Merced, State of California and the United States.

II

Dismantling and Packaging of an Entire Cement Plant Are the Usual, Regular and Necessary Steps in the Process of Exportation

The cement plant in its operative state was sold, it was in existence, there was nothing to be done to it to make it an operative cement plant, there was no manufacturing necessary to place it in that condition. All that was necessary was that it be removed to the foreign destination. As we all can recognize it is not a simple matter to move an operative cement plant. It cannot be placed on a freight car nor can it even be placed on one boat, even if it were possible to lift it bodily without dismantling it. Therefore, the only method to appropriate it for exportation and to [fol. 185] start its movement was to dismantle and crate its component parts.

It is the position of the Respondents that when Bigge Drayage Company took possession of the plant and removed the first bolt or rivet under its contract to dismantle, crate and load on freight cars, that this was the overt act which committed the entire plant to exportation, coupled also with the continuous operation of Bigge until the whole of the plant, without cessation, was completely exported in accordance with its contract and fulfilling the contract executed between Empresa and Kaiser.

It is not, however, necessary to start at that point since more than two months had elapsed from the time of Bigge starting its work and the tax day. On March 5, 1945, 14 carloads had been shipped and the work continued expeditiously (without cessation) until the entire 123 carloads had been shipped.

The Constitution of the United States does not differentiate between large and small articles. The Supreme Court of the United States in its decisions has not made any such differentiation. Either the entire cement plant is an export or it is not. Never before has there been any decision of this Court or of the Supreme Court of the United States where an apportionment of an export has been attempted.

The decision in this case carried to its logical conclusion would necessarily mean that no exportation of a large plant [fol. 186] such as a cement plant or a steel mill could be made without incurring a tax as to the portion not yet physically loaded upon railroad cars. Does the Constitution mean that small articles may not be taxed because they may easily be loaded on railroad cars, but large articles such as a cement plant may only have such exemption as may be loaded and shipped out of the county on tax day?

Thus, it is said in the opinion:

> "The fact that a portion of the plant had actually been shipped is not controlling as to that portion which was in the process of preparation for exportation, although there can be no question concerning the owner's intention to take it out of the country." (Opinion, pp. 8-9.)

We respectfully submit that reflection will show the error of this view. If all that the Constitution prohibited was taxation by a state after they had been loaded onto a common carrier, none of the evils would have been ended which it was the express object of the framers of the Constitution to eliminate.

The Supreme Court of the United States has consistently held that delivery to a common carrier is only evidence of committing goods to exportation. "But the same degree of certainty may exist though no common carrier is involved." *Richfield Oil Corp. v. State Board*, 329 U. S. 69, 82.

The integrated acts of Bigge, the railroad, and the steam-

ship company comprise the movement of the entire cement plant. The combination of all three was necessary.

[fol. 187] The overt acts in committing the entire cement plant cannot be compared to vicarious contentions to export. The exportation was definite, it was certain, and it was actually carried through without interruption.

III

Dismantling and Packaging Are Not the Same as Manufacturing or Growing Crops

The question has been put that if the trial Court were affirmed in this case that in many states there would be nothing but the lands and real estate to bear the taxes. "Some of the Western States produce very little except wheat and corn, most of which is intended for export; and so of cotton in the Southern States." (Opinion p. 5.)

We have no argument with the decisions which do not exempt from taxation those articles which have not yet come into being. However, with respect to this point, attention is called to dicta in *Superior Oil Co. v. Mississippi*, 280 U. S. 390, which was quoted with approval in *Richfield Oil Co. v. State Board*, 329 U. S. 69, 82:

> "But it added, p. 396, 'Dramatic circumstances, such as a great universal stream of grain from the State of purchase to a market elsewhere, may affect the legal conclusion by showing the *manifest certainty of the destination* and exhibiting grounds of policy that are absent here.'"

[fol. 188] Can it be said that there was ever a case where manifest certainty of the destination was any clearer?

To manufacture an article is to unite miscellaneous component parts creating a unit distinguished from its component parts.

The cement plant had already been manufactured; it was complete and in existence and nothing remained to be done to bring it into existence.

The cement plant was sold as a complete operating cement plant in its existing form. Upon passage of title and delivery to the forwarding agent, nothing remained to be done except to ship it. To ship it required that it be put in suitable form for transportation which was as much a part of the transportation as the transportation itself.

IV

Delivery to Export Forwarding Agent Commits Goods to Export

Clark & Co. v. Clark, 3 Woods 408, is a case in principle very like this case, omitting the fact of the shipment of the 12%. There the County of Merced would contend that nothing had been done towards the export of the logs in question. They had been purchased by one citizen of Georgia from another and shipped to the place of business of the purchaser, where they were lying at the moment at which they were taxed. They had not started on any journey of export. But the man who bought them was an [fol. 189] exporter and engaged in no other business. The Court held that this rendered their export so certain that they had become exempt from tax as exports. If said: "Is the fact that they were still on land, though awaiting shipment such a circumstance as deprives them of their character as exports"? The Court said that it did not.

V

The Spalding Case

A. G. Spalding & Bros. v. Edwards, 262 U. S. 66, is a case where a firm in Venezuela ordered Scholtz & Co., commission merchants, in New York to buy for their account and risk a certain number of baseballs and baseball bats from Spalding. Scholtz & Co. ordered Spalding to pack for export and deliver the goods to the boat which was done and a receipt was taken from the carrier. The receipt was sent to Scholtz & Co. which exchanged it for an export bill of lading in their name. The transaction from start to finish was understood and intended by the plaintiff and Scholtz & Co. to be for the purpose of exporting the goods to the Venezuela company.

Justice Holmes delivered the opinion of the Court (pp. 69-70):

> "The very act that passed the title and that would have incurred the tax had the transaction been domestic, committed the goods to the carrier that was to take them across the sea, for the purpose of export and with [fol. 190] the direction to the foreign port upon the goods. The expected and accomplished effect of the act

was to start them for that port. *The fact that further acts were to be done before the goods would get to sea does not matter so long as they were only the regular steps to the contemplated result.* Getting the bill of lading stands no differently from putting the goods on board ship. Neither does it matter that the title was in Scholtz & Co. and that theoretically they might change their mind and retain the bats and balls for their own use. There was not the slightest probability of any such change and it did not occur. The purchase by Scholtz & Co. was solely for the purpose of Delgado & Cia. and for their account and risk. *Theoretical possibilities may be left out of account.* In Railroad Commission of Louisiana v. Texas & Pacific Ry. Co., 229 U. S. 336, the consignees might have retained the goods at New Orleans instead of shipping them abroad. The fact that they came to New Orleans by rail from another place in the State made no difference. The same principle was applied in Texas & New Orleans R. R. Co. v. Sabine Tram Co., 227 U. S. 111, 123. The overt act of delivering the goods to the carrier marks the point of distinction between this case and Cornell v. Coyne, 192 U. S. 418. To put it at any later point would fail to give to exports the liberal protection that hitherto they have received; of which an example may be seen in Thames & Mersey Marine Ins. Co. v. United States, 237 U. S. 19."

[fol. 191]

VI

Substance, Not Form, Governs

A liberal construction has been accorded where it is found from the circumstances that export trade has been actually intended and carried through, and in such cases primary consideration is given matters of substance and not of form.

"For the purpose of determining whether petitioner was the importer in the constitutional sense, it is immaterial whether the title to the merchandise imported vested in him who caused it to be brought to this country at the time of shipment or only after its arrival here . . . For in determining the meaning and application of the constitutional provision, *we are concerned with matters of substance, not of form.* When the mer-

chandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or on the technical procedures by which it is effected."

Hooven & Allison Co. v. Evatt, 324 U. S. 652, 662-663, 65 S. Ct. 870, 89 L. Ed. 1252.

See also to the same effect:

Carson Petroleum Co. v. Vial, 279 U. S. 95, 103, 48 S. Ct. 292, 73 L. Ed. 626;

In re Globe Varnish Company (C. C. A.), 114 Fed. (2d) 916.

[fol. 192] Conclusion

In conclusion, we again call attention to the fact that the contract which was entered into between Kaiser and the foreign purchaser Empresa called for the exportation of an entire cement plant from California to Colombia. An export license was issued by the Federal Government; Empresa paid for the entire cement plant; it employed an export forwarding agent which in turn employed a contractor to effect the exportation in the only manner possible under the circumstances. Upon the passage of title to Empresa the foreign purchaser, the export forwarding agent took possession and the contractor began dismantling and packaging operations. The dismantling, packaging and shipping continued without cessation from the time of the passage of title in January of 1945 until the entire cement plant, the subject matter of the contract between the seller and the foreign buyer, was completely exported. When Bigge began dismantling and packaging, the cement plant was completely committed to exportation. It was beyond the sellers power to prevent exportation because the seller no longer owned the cement plant. The fact that 14 carloads (12%) of the entire cement plant had been started on its journey by the tax day made it a certainty that the entire cement plant would be exported. 12% of a cement plant in Colombia had no value; 88% of a cement plant in the United States had no value. The cement plant had been paid for as had the contract for dismantling, packaging and shipping; all of which occurred more than two months prior to the tax day.

[fol. 193] It is respectfully submitted that if the mandate of the Supreme Court of the United States is to be observed that transactions be examined in the light of the constitutional provisions and the purpose of the Constitution, instead of by mere formality or technical procedure, the entire transaction was an export of an entire cement plant, a tax upon which either by the government of the United States or any State of the Union was specifically forbidden by the Constitution of the United States.

It is respectfully submitted that respondents' petition for a rehearing should be granted and that the judgment of the trial Court should be affirmed.

Dated, Oakland, California, June 29, 1948.

Respectfully submitted, Scott D. Kellogg, Raymond Salisbury, Betsy FitzGerald Rahn, Attorneys for Respondents and Petitioners.

[fol. 194] AFFIDAVIT OF MAILING

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

M. B. Dillon, being first duly sworn, deposes and says:

That she is a citizen of the United States of America, over the age of twenty-one years and not a party to the action of "Empresa Siderurgica, S. A. vs. County of Merced" in the Supreme Court of the State of California, Sac. No. 5893;

That on June 30, 1948, she mailed by first class mail, postage prepaid, two copies of the respondents' petition for a rehearing, in the above entitled action, to Frank C. Hale, District Attorney, Court House, Merced, California; Frad N. Houser, Attorney General, James E. Sabine, Deputy; State Building, San Francisco, attorneys for appellants. The above are the last known addresses of said attorneys.

Affiant also mailed a copy of the above mentioned petition to Hon. Peter J. Shields, Court House, Sacramento, California, the judge who tried the cause.

M. B. Dillon.

Subscribed and sworn to before me this 30th day of June, 1948. Henry B. Lister, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

[fols. 195-196] [File endorsement omitted]

[fol. 197] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

APPELLANTS' ANSWER TO RESPONDENTS' PETITION FOR A REHEARING—Filed July 7, 1948

To the Honorable Phil S. Gibson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:

Plaintiffs' petition for rehearing presents very little that has not already been discussed in the briefs on file. We [fol. 198] shall, therefore, be brief in our reply to the petition.

I. The Decision of This Court Is in Accord With the Decisions of the United States Supreme Court

Plaintiffs' assertions that the decision of this Court fails to follow "the plain teachings of the decisions of the United States Supreme Court" are not well founded. On the contrary the decision which has been rendered by this Court is completely in accord with the decisions of the United States Supreme Court.

The applicable rule is quoted in the opinion of this Court. This rule was stated many years ago in the case of *Coe v. Errol*, 116 U. S. 517, and was repeated as recently as last year in the case of *Richfield Oil Corporation v. State Board of Equalization*, 329 U. S. 69, 70. The rule is "that such goods do not cease to be part of the general mass of property in the State, subject, as such, to its jurisdiction, and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation to another State, or have been started upon such transportation in a continuous route or journey . . ."

As this Court has pointed out in its opinion, the stipulated facts clearly show that the property assessed was not exempt from taxation under the above quoted rule. It had not been delivered to a common carrier for transportation and it had not been shipped. It was still at the plant site and much of it had not even been dismantled.

[fol. 199] The decisions of the United States Supreme

Court relied upon by this Court in its opinion, clearly sustain the decision of this Court.

The case of *Clarke & Co. v. Clarke*, 3 Woods 408, cited by plaintiffs, is not a decision of the United States Supreme Court, but of a lower federal court. It was decided in 1877, nine years before the United States Supreme Court rendered its opinion in *Coe v. Errol*, 116 U. S. 517, in which the Court stated the applicable rule. The *Clarke* case was decided, therefore, without the benefit of the exposition of applicable principles which later appeared in *Coe v. Errol*. Moreover, in the *Clarke* case, unlike the present case, the property had been moved from the place of purchase.

II. The Spalding Case

Plaintiffs suggest that the opinion in *A. G. Spalding & Bros. v. Edwards*, 262 U. S. 66, calls for a different result from that which this Court has reached. One sentence in that opinion completely distinguishes that case from the case before this Court. That sentence appears at page 70 of the opinion and reads as follows:

> "* * * *The overt act of delivering the goods to the carrier marks the point of distinction between this case and Cornell v. Coyne*, 192 U. S. 418 * * *" (Emphasis added.)

Here, the stipulated facts show that none of the property assessed had been delivered to the carrier (Atchison, Topeka & Santa Fe Ry. Co.).

[fol. 200] III. No Question of Valuation Is Presented

Plaintiffs make statements with respect to valuation which we believe do not require an extended answer. The short answer is that the question of valuation is not presented on this appeal. It was not raised in the protest which was filed when the tax was paid. It was not an issue in the trial Court. The question was not presented either by the pleadings or by the stipulation of facts.

IV. Exportation Had Not Commenced With Respect to the Property Assessed

In their petition for rehearing, plaintiffs reiterate the argument made in their brief that because part of the prop-

erty which was purchased by Empresa had been shipped out of the State by tax day, all of the property was exempt from tax, including that still standing in the county in an undismantled condition.

Plaintiffs argue that what they purchased was an entire operating cement plant, and that when any part of the property purchased had been shipped it all should be regarded as moving in export, even that which still was standing in an undismantled condition. The position contended for by plaintiffs is not supported by any decision of this Court or of the United States Supreme Court.

Moreover, while for purposes of convenience, the property sold was referred to in the contracts as the "cement plant", it included machinery, equipment, removable structures, removable facilities, spare parts, supplies and miscellaneous [fol. 201] items. (C. T. 42-45, 54.) It included such items as gasoline engines, a caterpillar tractor, motors, lathes, wiring supplies, hand tools, twine, furniture and welding equipment and supplies, to mention only a few. (Exhibit "5" of the Agreed Statement of Facts.) The reference "cement plant" also included certain machinery, equipment, structures, spare parts and supplies which at one time had been located at a certain quarry at Emory, California, but which, when the contract of sale was entered into, were located at the site of the main plant at Merced. (C. T. 42.)

Plaintiffs contend that there is an essential difference between the manufacture of property for export and the dismantling of property for export. However, plaintiffs fail to cite any authorities which support this contention. In both instances the property is in the process of preparation for export and has not yet acquired the status of an export. There is nothing in the opinions of the United States Supreme Court to indicate that a different result should obtain here if the property were manufactured for export so that plaintiffs could have an operating cement plant than if property were dismantled for export so that plaintiffs could have an operating cement plant. In either case, the exportation of the property would not commence until the property was shipped or entered with a common carrier for transportation.

Plaintiffs seek to have this Court hold, contrary to the well reasoned opinion which it has rendered, that property which had not been delivered to a common carrier for [fol. 202] transportation, which had not been moved from

the place of purchase and a substantial part of which still was standing in an undismantled condition on the plant site, nevertheless was in export on tax day. Plaintiffs have not cited and we are not aware of any decision of the United States Supreme Court which would justify such a result.

Conclusion

We respectfully submit that plaintiffs' petition for a rehearing should be denied.

Dated, July 6, 1948.

Respectfully submitted, Gregory P. Maushart, District Attorney of the County of Merced; Fred N. Howser, Attorney General of the State of California; James E. Sabine, Deputy Attorney General of the Stafe of California, Attorneys for Appellants.

[fol. 203] IN THE SUPREME COURT OF CALIFORNIA

In Bank

[Title omitted]

ORDER DENYING REHEARING—Filed July 8, 1948

Respondents' petition for a rehearing Denied.

Gibson, Chief Justice.

Dated Jul. 8, 1948.

[File endorsement omitted.]

[fol. 204] IN THE SUPREME COURT OF CALIFORNIA

Sacramento No. 5893

EMPRESA SIDERURGICA, S. A., a Corporation of Colombia, South America, and Vanderburgh & Co., Inc., a California Corporation, Plaintiffs and Respondents,

vs.

COUNTY OF MERCED, a Municipal Corporation, J. EMMETT McNAMARA, Assessor of the County of Merced, et al., Defendants and Appellants

On Appeal from the Superior Court in and for the County of Merced

JUDGMENT—June 15, 1948

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It Is Ordered, Adjudged, and Decreed by the Court that the Judgment of the Superior Court in and for the County of Merced, in the above entitled cause, be and the same is hereby reversed.

Appellants to recover costs on appeal.

I, William I. Sullivan, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 15th day of June, 1948, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 16th day of July, A. D. 1948.

William I. Sullivan, Clerk, by L. F. White, Deputy.
(Seal.)

[fol. 205] [File endorsement omitted.]

[fol. 206] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENTS OF ERROR, AND PRAYER FOR REVERSAL—Filed August 19, 1948

To the Honorable Phil S. Gibson, Chief, Justice of the Supreme Court of the State of California:

Empresa Siderurgica, S. A., a corporation of Colombia, South America, and Vanderburgh & Co., Inc., a California corporation, appellants and plaintiffs in the above entitled cause, petition and represent as follows:

The decision of the Supreme Court of the State of California in the above entitled cause was filed with the Clerk of said Court on June 15, 1948. On June 30, 1948, a petition for rehearing in said case was duly presented and filed by appellants. On July 8, 1948, an order was made by the Supreme Court of the State of California in said [fol. 207] cause denying said petition for rehearing.

Considering itself aggrieved by the said final judgment of the Supreme Court of the State of California in the above entitled cause, said appellants, Empresa Siderurgica, S. A., a corporation of Colombia, South America, and Vanderburgh & Co., Inc., a California corporation, hereby pray that an appeal be allowed to the Supreme Court of the United States and for an order fixing the amount of bond.

Assignments of Error

The said appellants, Empresa Siderurgica, S. A., a corporation of Colombia, South America, and Vanderburgh & Co., Inc., a California corporation, assign the following errors in the record and proceedings in said cause:

(1) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in sustaining the validity of the California Revenue & Taxation Code, Division 1, as amended, construed, applied and enforced to impose a personal property tax upon a portion of an entire and complete cement plant here involved, as against appellants' contention that said Act, so construed, applied and enforced, is invalid under Article I, section 10, clause 2, of the United States Constitution.

(2) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in its determination that the California Revenue & Taxation Code, Division I, as amended, when construed and applied to impose a personal property tax upon a portion of an [fol. 208] entire and complete cement plant committed and in the process of exportation to Colombia, South America, and which was so exported, is not invalid under and repugnant to the provisions of Article I, section 10, clause 2, of the United States Constitution.

(3) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in its determination that the tax levied upon and collected from appellants, Empresa Siderurgica, S. A., a corporation of Colombia, South America, and Vanderburgh & Co., Inc., a California corporation, pursuant to the California Revenue & Taxation Code, Division I, as amended, was not an impost or duty on exports in violation of or repugnant to or within the meaning of Article I, section 10, clause 2, of the United States Constitution.

(4) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in its determination that the preparation for export not only included: (a) the negotiations preceding the signing of the export sales contract; (b) the execution of the export sales contract; (c) the employment of the export forwarding agent; (d) the employment of Bigge; (e) the issuance of the export license; and (f) the establishment of the letter of credit; but also included: (g) the passage of title and delivery of the cement plant to the purchaser; (h) delivery of the cement plant to the export forwarding agent and its activities in contracting for the dismantling, packaging, loading, railroad cars, shipping space, preparation of [fol. 209] foreign documents, bills of lading and other activities; and (i) delivery of the cement plant to Bigge and its activities in dismantling, packaging and shipping; and only excepted that part of the plant which had been actually loaded on railroad cars and left the county on March 5, 1945.

(5) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in failing to give consideration or effect to:

(a) That the contract of November 11, 1944, between Empresa and Kaiser was an export sales contract.

(b) The provisions of the export sales contract which, among other things, required passage of title to purchaser and delivery of the entire and complete cement plant to the purchaser's forwarding agent upon payment therefor.

(c) The provisions of the export sales contract which, among other things, provided for the sale of an entire and complete cement plant and which by its terms was not divisible or severable.

(d) The provisions of the Bigge contract which, among other things, required Bigge upon taking possession of the cement plant to dismantle, package and load on railroad cars without interruption or cessation until the entire cement plant had been completely dismantled, packaged and shipped.

(e) The provisions of the Bigge Contract which, [fol. 210] among other things, provided for the preparation for shipment of an entire and complete cement plant and which by its terms was not divisible or severable.

(f) The issuance of an export license by the Foreign Economic Administration permitting the exportation of the entire and complete cement plant.

(g) The provisions of the letter of credit for the account of Banco de Bogota, Medellin, Colombia, South America, on behalf of appellant, Empresa Siderurgica, S. A., (the purchaser) for the balance of the purchase price of the entire cement plant which, among other things, required the presentation of the export license permitting the export of the entire cement plant to the Republic of Colombia, South America.

(h) The actual exportation of the entire cement plant to Colombia, South America, pursuant to the export sales contract, the Bigge contract, the export license and the letter of credit.

(6) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in failing

to give consideration or effect to the fact that the following are the usual, necessary and regular steps to effect the exportation of the entire cement plant:

(a) The export sales contract of November 11, 1944.

(b) The employment of an export forwarding agent on December 2, 1944.

[fol. 211] (c) The Bigge contract of December 2, 1944.

(d) The issuance of an export license by the U. S. Foreign Economic Administration on December 15, 1944.

(e) The issuance of a letter of credit in payment of the entire cement plant on January 3, 1945.

(f) The passage of title and delivery to the foreign purchaser on January 3, 1945.

(g) The delivery of the entire cement plant to the export forwarding agent on January 3, 1945.

(h) The delivery of the entire cement plant to Bigge on January 3, 1945.

(i) The integrated operation of the export forwarding agent in preparing foreign documents, bills of lading, negotiations for shipping space by rail and sea; the dismantling, packaging and loading on railroad cars by Bigge; the movement of the railroad cars to the seaboard; and the loading on the steamships at the seaboard which carried the entire cement plant to its foreign destination; all of which commenced on January 3, 1945, and continued without interruption or cessation until the whole of the cement plant left the United States on January 29, 1946.

(j) That the entire cement plant was actually exported.

(7) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in its determination that the export sales contract was effective [fol. 212] and operative as a matter of law to sever and change the entire cement plant from real property to personal property, which was so assessed as personal property

by the County of Merced, but was not effective operative as a matter of law as the first step in and the commencement of the exportation of the said cement plant.

(8) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in its determination that the passage of title of said cement plant to purchaser and the delivery of the cement plant to the purchaser, purchaser's export forwarding agent and Bigge, pursuant to the export sales contract, occurred prior to the commencement of exportation of said cement plant.

(9) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in its determination that delivery to the export forwarding agent on January 3, 1945, pursuant to the export sales contract and coupled with the subsequent acts of complete exportation of the entire cement plant, was not the equivalent of delivery to a common carrier for transportation.

(10) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in its determination that delivery to Bigge Drayage Co. on January 3, 1945, pursuant to its contract with the export forwarding agent, dated December 2, 1944, coupled with its subsequent acts of dismantling, packaging and shipping the entire cement plant to the foreign destination, was not equivalent to delivery to a common carrier for transporta-
[fol. 213] tion.

(11) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in its determination that no exportation of the cement plant commenced until the parts thereof were loaded on the cars of a railroad common carrier.

(12) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in its determination that the property owner's argument that because 12% of the plant had been shipped out of the county and was clearly an export, the remaining 88%, whether dismantled and packaged or not, was likewise an export, cannot be sustained.

(13) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in its determination that the integrated activities of the export for-

warding agent and Bigge was an intention to export rather than a commencement of exportation.

(14) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in its determination that the fact that a portion of the cement plant had actually been shipped, is not controlling as to that portion which is in the process of preparation for exportation, although there can be no question concerning the owner's intention to take it out of the country.

(15) The Supreme Court of the State of California erred in its final judgment in the above entitled cause, in its de-
[fol. 214] termination that the trial judge erred when he held, as a matter of law, that when the goods have been committed to exportation, a tax imposed upon them amounts to taxation of an export.

(16) The Supreme Court of the State of California erred in its final judgment in the above entitled cause, in its determination that the trial judge erred in holding that "proceeding to change . . . (the plant) from parts in place of a complete building, into a mass of disconnected materials made the completion of the exportation economically imperative. This was not a mere preparation of the plant for exportation; by such action and change the parts had been started upon such transportation" with the degree of certainty demanded by Coe v. Errol, (116 U. S. 517) and the many cases which have endorsed it."

(17) The Supreme Court of the State of California erred in its final judgment in the above entitled cause, in its determination that on March 5, 1945, the statutory date for the assessment of the personal property for the tax year 1945-46, the portion of the entire and complete cement plant being dismantled and packaged, was not committed to exportation within the meaning of Article I, section 10, clause 2, of the United States Constitution.

(18) The Supreme Court of the State of California erred in its final judgment in the above entitled cause, in its determination that the tax levied upon appellants was not invalid, illegal or unenforceable and was not contrary to, or in violation of, the provisions of Article I, section 10, clause 2, of the Constitution of the United States, because
[fol. 215] said tax was levied on the portion of the cement

plant which had not been loaded on the cars of a railroad common carrier.

(19) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in its determination that the scope and effect of United States Constitution, Article I, section 10, clause 2, permits or requires different results as to the validity of a tax upon exports when (a) the goods are delivered for exportation to the foreign purchaser, purchaser's export forwarding agent and contractor, and (b) when the goods are delivered for exportation to a railroad common carrier.

(20) The Supreme Court of the State of California erred in its final judgment in the above entitled cause in reversing the judgment of the Superior Court of the State of California.

Prayer for Reversal

For which errors, appellants, Empresa Siderurgica, S. A., a corporation of Colombia, South America, and Vanderburgh & Co., Inc., a California corporation, pray that the said judgment of the Supreme Court of the State of California, dated June 15, 1948, in the above entitled action be reversed and a judgment rendered in favor of the said appellants, and for costs.

Dated: August 19th, 1948.

Scott D. Kellogg, Attorney for Appellants.

[fol. 216] [File endorsement omitted]

[fol. 217] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 19, 1948

Empresa Siderurgica, S. A., a corporation of Colombia, South America, and Vanderburgh & Co., Inc., a California corporation, having prayed for an allowance of an appeal to the Supreme Court of the United States from the final judgment rendered by the Supreme Court of the State of California in the above entitled cause and having presented and filed their petition for appeal, assignments of error and prayer for reversal, and a statement as to jurisdiction

on appeal, pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided.

It is now ordered that an appeal be and the same is hereby allowed in the above entitled cause as provided by law, from [fols. 218-219] the Supreme Court of the State of California to the Supreme Court of the United States; and

It is further ordered that the Clerk of the Supreme Court of the State of California prepare and certify a transcript of the record in this cause, as may be designated by the appellants and appellees, and transmit the same to the Supreme Court of the United States so that the Clerk of said Court shall have said record within sixty days from this date; and

It is further ordered that security for costs on appeal be fixed in the sum of $500.00, and that upon approval of bond in said amount all further proceedings in the above entitled cause shall be stayed until final determination of said appeal.

Dated: August 19, 1948.

Douglas L. Edmonds, Acting Chief Justice of the Supreme Court of the State of California.

[fols. 220-222] Citation in usual form filed Aug. 19, 1948, omitted in printing.

[fols. 223-224] Bond on appeal for $500.00 approved and filed Aug. 19, 1948, omitted in printing.

[fol. 225] [File endorsement omitted]

[fol. 226] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR TRANSCRIPT ON APPEAL TO SUPREME COURT OF THE UNITED STATES—Filed August 19, 1948

To the Supreme Court of the State of California and to the Clerk thereof:

On behalf of Empresa Siderurgica, S. A., a corporation of Colombia, South America, and Vanderburgh & Co., Inc., a California corporation, appellants, it is requested that

you prepare and certify the transcript of record on appeal to the Supreme Court of the United States in the above entitled cause and the following are hereby designated to be included in said transcript:

1. Clerk's transcript on appeal as filed in Supreme Court of the State of California.

2. Proceedings in Supreme Court of the State of Cali-
[fol. 227] fornia.

3. Petition for allowance of appeal, assignments of error and prayer for reversal.

4. Statement of jurisdiction on appeal.

5. Order allowing appeal.

6. Bond on appeal.

7. Citation on appeal.

8. Praecipe for transcript on appeal.

9. Appellants' notice to appellees of appeal and statement directing appellees' attention to paragraph 3, rule 12, Rules of Supreme Court of the United States.

10. Proof of service on appellees of preceding documents designated as numbers 3 to 9, inclusive.

11. All statements and motions required and permitted to be filed under rule 12 of Rules of the United States Supreme Court.

Dated: August 19, 1948.

Scott D. Kellogg, Attorney for Appellants.

[fol. 228] [File endorsement omitted]

[fol. 229] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

STIPULATION—Filed September 22, 1948

It is hereby stipulated that that portion of the opinion of the trial court appearing at page 143 of the transcript, line 3, which now reads "March 5, 1944", should read "March 5, 1945".

It is further stipulated, therefore, that the Clerk of the Supreme Court of California in certifying the record in

the above entitled action may correct the transcript at page 143, line 3, to read "March 5, 1945" instead of "March 5, 1944".

Dated: September 22, 1948.

Scott D. Kellogg, Attorney for Plaintiffs & Respondents. Fred N. Howser, Attorney General of the State of California; James E. Sabine, Deputy Attorney General of the State of California; Gregory P. Maushart, District Attorney of the County of Merced, by James E. Sabine, Deputy Attorney General, Attorneys for Defendants & Appellants.

[fols. 230-235] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 236] In the Supreme Court of the United States

Statement of Points on Which Appellants Intend to Rely, and Designation of Record—Filed September 29, 1948

In compliance with Paragraph 9 of Rule 13 of the Rules of the Supreme Court of the United States, Appellants, Empresa Siderurgica, S. A. and Vanderburgh & Co., Inc., hereby adopt each and every of its assignments of error as its statement of points intended to be relied upon by Appellants.

In further compliance with Paragraph 9 of Rule 13 of the Rules of The Supreme Court of the United States, Appellants, Empresa Siderurgica, S. A., and Vanderburgh & Co., Inc., think the entire record of the above entitled cause, as certified by the Clerk of the Supreme Court of California, is necessary for the consideration of the points upon which Appellants intend to rely; and accordingly Appellants, Empresa Siderurgica, S. A., and Vanderburgh & Co., Inc., designate that the entire record, as certified by [fols. 237-238] the Clerk of the Supreme Court of the State of California, shall be printed by the Clerk of the Supreme Court of the United States.

Dated: September 21, 1948.

Scott D. Kellogg, Attorney for Appellants.

Proof of Service of Papers on Appellees

Service is hereby acknowledged on this 21st day of September, 1948, of the following in the above entitled cause:

Statement of Points on Which Appellants Intend to Rely, and Designation of Record.

Gregory P. Maushart, District Attorney of the County of Merced; Fred N. Howser, Attorney General of the State of California; James E. Sabine, Deputy Attorney General of the State of California, Attorneys for Appellees.

[fol. 239] Supreme Court of the United States

Order Noting Probable Jurisdiction—November 8, 1948

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: Enter Scott D. Kellogg. File No. 53,329, California, Supreme Court, Term No. 327. Empresa Siderurgica, S. A., a Corporation of Colombia, South America, et al., Appellants, vs. County of Merced, a Municipal Corporation, J. Emmett McNamara, Assessor of the County of Merced, et al. Filed September 29, 1948. Term No. 327 O.T. 1948.